

1 STATE OF TENNESSEE
2 DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
3 PREVAILING WAGE COMMISSION MEETING
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10 November 29, 2018
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ORIGINAL

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 Commissioner Burns Phillips, Chairman 3 Commissioner Wayburn Crabtree, TDOT Designee 4 Ann McGauran, State Architect Tennessee Department of Treasury 5 R. T. Summers, Industry Representative (telephone) 6 Summers-Taylor, Inc. Elizabethton, Tennessee 7 Stephen Wright, Industry Representative Wright Brothers Construction 8 Dan Bailey, Legal Counsel 9 Kim Y. Jefferson, Administrator 10 Lynn Kirby, Board Secretary 11 Jan Caudill, Administrative Assistant 12 Carolyn Sherrod, Administrative Services Manager 13 Kenneth Nealy 14 Kenneth Starwalt (telephone) 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">AGENDA</p> <p>1 2 I. Call Meeting to Order and Roll Call 3 II. Introductions and Announcements 4 III. Adoption of Agenda 5 IV. Review and Approve November 16, 2018 meeting summary prepared by the Labor Standards Unit 6 7 V. Old Business *Whether the Prevailing Wage Rates Apply to any Municipality, County or other 8 Political Subdivision *Approve Blaster-in-Charge/Blaster Assistant 9 *Approve proposed rules 10 VI. New Business *Review and Discuss the Approved 2019 Wage Rates for State Highway Construction Projects 11 +Discuss Four (4) Miscalculated Rates 12 *Compare and Contrast Surveys that were 13 Previously Excluded *Set Rates for 2019 Prevailing Wage for 14 State Highway Construction Projects 15 VII. Open Discussion Items *Proposed Prevailing Wage Commission Meeting Dates for 2019 16 +August (15th or 22nd, 10AM or 1:30PM CDT) 17 +November (13th or 14th, 20th or 21st, 10AM or 1:30PM CST) 18 +Conflict of Interest and Declarations will be Completed at the August 2019 Meeting 19 20 VIII. Adjournment 21 22 23 24 25</p>
<p style="text-align: right;">Page 4</p> <p>1 * * * * * 2 CHAIRMAN PHILLIPS: We'll call this 3 meeting, this prevailing wage commission to order. 4 First, I'll read the announcement. 5 In the event of an emergency or 6 natural disaster, security personnel will take 7 attendees to a safe place in the building or 8 direct them to an exit in the building on the Rosa 9 Parks side. 10 So I think the last time I forgot to 11 go around and introduce everybody, so we'll start 12 with that and everybody just go around and 13 introduce themselves, starting with you, Madam. 14 THE REPORTER: Cassandra Beiling, Stone & George Court Reporting. 15 MS. MCGAURAN: Ann McGauran, state 16 architect. 17 MR. CRABTREE: Wayburn Crabtree. I 18 represent the commissioner of transportation. 19 MR. WRIGHT: Steve Wright with 20 Wright Brothers Construction Company. 21 CHAIRMAN PHILLIPS: Burns Phillips, 22 Commissioner of Labor and Workforce Development. 23 MS. KIRBY: Lynn Kirby. I'm an 24 ASA-3 with WRC. 25</p>	<p style="text-align: right;">Page 5</p> <p>1 MS. JEFFERSON: Kim Jefferson, 2 Tennessee Department of Labor and Workforce 3 Development. 4 MR. BAILEY: Dan Bailey, legal 5 counsel, Tennessee Department of Labor and 6 Workforce Development. 7 MR. NEALY: Kenneth Nealy, Labor 8 and Workforce Development. 9 MS. CAUDILL: Jan Caudill, Labor 10 and Workforce Development. 11 MS. SHERROD: Carolyn Sherrod, 12 Labor and Workforce Development. 13 MS. XIXIS: Tia Xixis, Department 14 of Labor and Workforce Development. 15 MS. BARNETT: Doris Barnett, 16 Department of Labor and Workforce Development. 17 MS. PAIGE: Ebony Paige, Department 18 of Labor and Workforce Development. 19 CHAIRMAN PHILLIPS: Okay. So I 20 think next we need to -- unless there are some 21 corrections, we need a motion to approve the -- 22 adopt the agenda. 23 MS. MCGAURAN: I'll make such a 24 motion. 25 CHAIRMAN PHILLIPS: Okay.</p>

<p style="text-align: right;">Page 6</p> <p>1 MR. CRABTREE: Second.</p> <p>2 CHAIRMAN PHILLIPS: All right. All</p> <p>3 in favor?</p> <p>4 (Affirmative response.)</p> <p>5 CHAIRMAN PHILLIPS: Okay. So</p> <p>6 moved.</p> <p>7 Review and approve November 16th</p> <p>8 meeting summary prepared by the Labor Standards</p> <p>9 Unit. And if there are no corrections --</p> <p>10 MR. WRIGHT: I would move for</p> <p>11 acceptance.</p> <p>12 CHAIRMAN PHILLIPS: Okay. Second?</p> <p>13 MS. MCGAURAN: Second.</p> <p>14 CHAIRMAN PHILLIPS: So it has been</p> <p>15 moved that they are accepted. All in favor?</p> <p>16 (Affirmative response.)</p> <p>17 CHAIRMAN PHILLIPS: So moved.</p> <p>18 Old business. So first would be</p> <p>19 whether the prevailing wages rates apply to any</p> <p>20 municipality, county, or other political</p> <p>21 subdivision. Do y'all have any comments?</p> <p>22 MR. CRABTREE: I would like to</p> <p>23 defer this discussion until sometime in the future</p> <p>24 whenever our TDOT general counsel can attend the</p> <p>25 meeting.</p>	<p style="text-align: right;">Page 7</p> <p>1 CHAIRMAN PHILLIPS: Okay.</p> <p>2 Dan, do you and John have a time set</p> <p>3 to get together or anything like that?</p> <p>4 MR. BAILEY: No.</p> <p>5 CHAIRMAN PHILLIPS: Okay. We can</p> <p>6 certainly do that. It doesn't require a vote or</p> <p>7 anything like that, does it?</p> <p>8 MS. JEFFERSON: Well, the only</p> <p>9 thing I would be concerned about is that we're</p> <p>10 trying to approve the rules, and that decision is</p> <p>11 dependent on whether or not we're able to move</p> <p>12 forward with the rulemaking process.</p> <p>13 I know that Dan had stated the</p> <p>14 Department's interpretation at the previous</p> <p>15 meeting, and so if we don't have any opposition</p> <p>16 with the Department's interpretation, then we</p> <p>17 probably need to proceed with it.</p> <p>18 If we need to modify the rules in the</p> <p>19 future, then we certainly have that option. But</p> <p>20 we really need to move forward with the rulemaking</p> <p>21 process.</p> <p>22 CHAIRMAN PHILLIPS: Yes. And only</p> <p>23 if there's an opposing view do we need to take a</p> <p>24 vote on it. So is there an opposing view?</p> <p>25 MS. MCGAURAN: Remind me. Just</p>
<p style="text-align: right;">Page 8</p> <p>1 because there's been a lot of discussion, just to</p> <p>2 make sure I know what I'm saying.</p> <p>3 CHAIRMAN PHILLIPS: Dan, do you</p> <p>4 want to repeat what our position is?</p> <p>5 MR. BAILEY: Well, our position is</p> <p>6 that the prevailing wage act does apply to local</p> <p>7 road projects that are federally or state funded.</p> <p>8 MS. MCGAURAN: I'm not opposed to</p> <p>9 that position.</p> <p>10 CHAIRMAN PHILLIPS: Steve?</p> <p>11 MR. WRIGHT: Oh, I'm not opposed</p> <p>12 either. If TDOT's position is strong, is it even</p> <p>13 appropriate for this commission, maybe, to make</p> <p>14 the recommendation between now and the next time</p> <p>15 we meet in August, that the general counsels from</p> <p>16 both divisions get together and arm wrestle or</p> <p>17 whatever you would do to see if it's appropriate</p> <p>18 for us to consider amending the rules next year to</p> <p>19 a different position. I mean, I would vote with</p> <p>20 you today, sir.</p> <p>21 MR. BAILEY: Well, I mean, I</p> <p>22 understand their position, and, you know, I don't</p> <p>23 know that meeting together is going to change our</p> <p>24 position. It's -- I mean, they make their</p> <p>25 argument, and I understand their argument, and we</p>	<p style="text-align: right;">Page 9</p> <p>1 have ours. And I think we're just kind of at an</p> <p>2 impasse there.</p> <p>3 And so our department is the one</p> <p>4 that's supposed to administer the act, and the</p> <p>5 commission, you know -- I mean, we take direction</p> <p>6 from the Prevailing Wage Commission. And so if</p> <p>7 you think that that interpretation -- that you, as</p> <p>8 a commission, think that interpretation is in</p> <p>9 error, you, by majority vote, can tell us that you</p> <p>10 think it's in error and we should not do it that</p> <p>11 way.</p> <p>12 CHAIRMAN PHILLIPS: And all of us,</p> <p>13 I'm assuming, followed the email between John</p> <p>14 and --</p> <p>15 MR. WRIGHT: Tried to.</p> <p>16 CHAIRMAN PHILLIPS: And, you know,</p> <p>17 certainly -- I agree with Dan's interpretation as</p> <p>18 well. So we can either say that we're going to</p> <p>19 move forward or we can take a vote and still move</p> <p>20 forward.</p> <p>21 MR. CRABTREE: I don't think I've</p> <p>22 seen anything, any wording as exactly what you</p> <p>23 want the rule to say. I mean, I've heard you</p> <p>24 discuss it, but have you put anything that</p> <p>25 actually has the wording in it that you want it to</p>

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1 say?

2 MR. BAILEY: The question is

3 whether certain language that's already in the

4 rules would come out. And it depends on whether

5 or not we applied the Prevailing Wage Act to local

6 road projects.

7 There's language in the current rules

8 right now that if we do apply to local road

9 projects needs to come. But if they are applied

10 to local road projects, that language can stay in

11 the rules. So that's what the issue of the rules

12 has been.

13 MS. MCGAURAN: Can you tell us what

14 section of the rules. I think we have these in

15 front of us.

16 MR. WRIGHT: Dan or Kim, whomever

17 can answer this, at the end of the day, if

18 we're -- the discussion is between TDOT and the

19 Department of Labor about what does or doesn't

20 apply, from TDOT's world, everything they touch,

21 it obviously applies.

22 MR. BAILEY: Right.

23 MR. WRIGHT: I mean, everything

24 that Wayburn estimates, or whatever, and y'all let

25 the contractors know, there's no controversy

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1 double or triple your wage costs and stuff like

2 that. So I think that that is probably not in the

3 overall interest of the taxpayers of Tennessee for

4 us to rule out the ability to have that.

5 Now, does that or does that not meet

6 with the intention of the legislature labor? I

7 can't speak for them. No idea.

8 MR. CRABTREE: Our specifications

9 say that when we have two wage rates, the higher

10 of the two will apply. So in your scenario there,

11 we would have to use the higher of the two wage

12 rates anyway if there was one that was higher than

13 the TDOT wage rate. So we're not saving any

14 money.

15 MR. WRIGHT: This would never

16 happen on a TDOT job.

17 MR. BAILEY: Right.

18 MR. WRIGHT: Because I've never

19 seen two wage rates. And the things I'm thinking

20 about, like, you know -- airports are really where

21 I've seen it, or some kind of government federal

22 building let by the City of Nashville, or

23 something like that. It could apply. And quite

24 honestly, I haven't seen it in several years. I

25 don't know that it was in Tennessee. But I have

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1 there. And I can appreciate that TDOT probably

2 doesn't want their DNA on much of anything else

3 other than their own business.

4 But at the end of day, you know --

5 and this was kind of what Rab had called me to

6 ask, and so I know he and I are in agreement on

7 it -- I think it's important to be more inclusive,

8 especially not such as it comes to demanding you

9 shall pay this prevailing wage, but there are

10 situations where if you do not include a

11 prevailing wage, that I think it could be

12 dangerous for us, honestly, to adopt John's view.

13 Because if they're, like, a municipal airport or

14 something, there are certain situations that have

15 pure federal funding, that if there's not a state

16 prevailing wage, then the federal prevailing wage

17 will come into play, which could have a very

18 significant impact on the cost of projects in some

19 places in the state.

20 And it might be unique situations and

21 not very often at all, but it could happen. You

22 know, because I've seen, over the years, a lot of

23 books with two prevailing wages. And without the

24 state rate in front of it, the union wage from

25 Washington, D.C. applies. And that's going to

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1 seen that occur. And my point is that if it

2 doesn't affect TDOT negatively, which there's no

3 way anything we do here, I mean, from that

4 perspective, affects TDOT, then I don't see where

5 the harm is to go ahead, just like the Department

6 of Labor represents, in that it could have some

7 positive effects if a municipality needs a wage

8 rate available to use where they can enforce --

9 you know, they can't call on you to enforce it.

10 We know that. But that could help them there.

11 And the other thing is that -- and

12 this is the part that I'm kind of speaking for Rab

13 on -- is he thinks that the survey data we get

14 should be more than just TDOT work. You know, we

15 should be able to take the municipal work that,

16 because we need more included data in there than

17 just TDOT's to get a sampling of the market.

18 Because you don't want -- inbred sounds wrong, but

19 that's really what it -- but if you only use TDOT

20 rates, then you have no way of checking it with

21 the rest of the world. And so, you know, to

22 include more rates rather than less in the ability

23 to sample, he thinks is important. And I do agree

24 with him on that.

25 MS. JEFFERSON: And I agree with

<p style="text-align: right;">Page 14</p> <p>1 that.</p> <p>2 CHAIRMAN PHILLIPS: I think we all</p> <p>3 agree with that.</p> <p>4 MS. JEFFERSON: Yes.</p> <p>5 CHAIRMAN PHILLIPS: At least we did</p> <p>6 at the end of the last meeting.</p> <p>7 MS. JEFFERSON: Yes. I agree with</p> <p>8 that because without those other entities being</p> <p>9 involved, it's not competitive. And we can't</p> <p>10 really see what the competitive rates are from,</p> <p>11 you know, industry -- not really industry, but</p> <p>12 from, say, municipality to state and so on and so</p> <p>13 forth. So it's very important to include all of</p> <p>14 them, not just limit it to one department.</p> <p>15 So I agree with that, and Dan and I</p> <p>16 had talked previously, and I know he made a really</p> <p>17 good point. He said in the event that we're</p> <p>18 unable to resolve -- say we do the -- this isn't</p> <p>19 the acceptable approach. There's always an</p> <p>20 alternative, a recourse. And that's in state</p> <p>21 court. We would hope we would be able to resolve</p> <p>22 it so that no one would appeal. But if someone</p> <p>23 does appeal, then they do have a recourse and they</p> <p>24 can go to state court, and state court can</p> <p>25 actually tell us whether or not our interpretation</p>	<p style="text-align: right;">Page 15</p> <p>1 was correct, or not. We don't want that, but that</p> <p>2 is an option.</p> <p>3 CHAIRMAN PHILLIPS: Well, I sort of</p> <p>4 agree with Steve. I also agree with your</p> <p>5 evaluation, Dan, that -- when you spoke to the</p> <p>6 intent of the legislature. Of course, it's</p> <p>7 difficult to know what their intent is, the way</p> <p>8 they write some things. But I think that in your</p> <p>9 case, I think that's a very valid point. You</p> <p>10 know, why would they -- you know, why would they</p> <p>11 include the words, you know, "constructed by any</p> <p>12 municipality or political subdivision of the</p> <p>13 state" if that did not intend for that to be in</p> <p>14 force and effect. So I'm with the department on</p> <p>15 that.</p> <p>16 MR. WRIGHT: I guess, to answer</p> <p>17 your original question, I would -- if forced to</p> <p>18 vote, I would vote in support of Mr. Bailey's</p> <p>19 position.</p> <p>20 CHAIRMAN PHILLIPS: Because I don't</p> <p>21 think there's going to be any harm between now</p> <p>22 and -- it can always be revisited, probably to the</p> <p>23 same end. It can always be revisited. But we do</p> <p>24 have to move forward now.</p> <p>25 MS. MCGAURAN: I would also say</p>
<p style="text-align: right;">Page 16</p> <p>1 that I have -- I know what I'm thinking about, but</p> <p>2 I have tracked and read and reviewed, and I agree</p> <p>3 with the Labor's -- and I've read everything</p> <p>4 that's been submitted by legal counsel for the</p> <p>5 Department of Transportation, and I understand the</p> <p>6 basis for that. And I agree with Mr. Bailey's</p> <p>7 perspective on this. I just do.</p> <p>8 MR. BAILEY: You had asked where in</p> <p>9 the rules. It is at 0800-03-02-.03 under</p> <p>10 Effective Dates. And the very last sentence, "No</p> <p>11 contract shall be let by any state agency or by</p> <p>12 any municipality, county, or other political</p> <p>13 subdivision for a state highway construction</p> <p>14 project."</p> <p>15 So those words, if the Prevailing</p> <p>16 Wage Act did not apply, would come out.</p> <p>17 MR. CRABTREE: Where is that?</p> <p>18 MR. BAILEY: 0800-03-02-.03,</p> <p>19 Effective Dates.</p> <p>20 MS. MCGAURAN: I believe that's,</p> <p>21 like, four pages from the end.</p> <p>22 MR. BAILEY: The pages aren't</p> <p>23 numbered because I can't submit rules to the</p> <p>24 Secretary of State's office that way.</p> <p>25 MS. JEFFERSON: Commissioner, the</p>	<p style="text-align: right;">Page 17</p> <p>1 red line is on the projector.</p> <p>2 CHAIRMAN PHILLIPS: Oh, there we</p> <p>3 go.</p> <p>4 MR. CRABTREE: So what's going to</p> <p>5 come out?</p> <p>6 MS. MCGAURAN: Nothing.</p> <p>7 MR. BAILEY: Well, nothing would</p> <p>8 come out now, but the question that we -- when it</p> <p>9 was first raised a couple of meetings back as to</p> <p>10 whether or not it did or did not apply to local</p> <p>11 road projects, if it was not going to apply, then</p> <p>12 the words in the rule or by any municipality,</p> <p>13 county, or other political subdivision would all</p> <p>14 have come out. But they would stay in now. So</p> <p>15 that was what generated the whole discussion.</p> <p>16 MR. CRABTREE: I would like to have</p> <p>17 something to take back to my department to see</p> <p>18 exactly what your proposed wording is.</p> <p>19 MS. MCGAURAN: This is the proposed</p> <p>20 wording.</p> <p>21 MR. CRABTREE: Okay. So this is</p> <p>22 it.</p> <p>23 MS. MCGAURAN: This is what the</p> <p>24 plan is.</p> <p>25 MR. CRABTREE: So we're not --</p>

<p style="text-align: right;">Page 18</p> <p>1 MR. BAILEY: That language is 2 currently in our rules, so we're not changing it. 3 It would only change if the position was -- 4 MR. CRABTREE: Okay. I got it. 5 MR. BAILEY: Okay. 6 MR. WRIGHT: And basically, in that 7 argument, should this group decide that 8 Mr. Reinbold's opinion was correct, then we would 9 be changing the rulings rather than leaving them 10 alone -- 11 MR. BAILEY: Correct. 12 CHAIRMAN PHILLIPS: Correct. 13 MR. WRIGHT: -- as it affects the 14 point of John's discussion. 15 MR. CRABTREE: I can't speak for 16 John, but I don't think John looks at it that way. 17 MR. WRIGHT: I believe him. 18 MR. CRABTREE: And also, we agree 19 with everything that's been said here concerning 20 the survey. But Mr. Reinbold's reading of the 21 statute does not prohibit -- in his opinion, does 22 not prohibit the inclusion of locally managed 23 projects. They can be included under the current 24 wording of the statute. So we have two issues, I 25 guess.</p>	<p style="text-align: right;">Page 19</p> <p>1 MR. BAILEY: I don't have an issue 2 with that, personally, you know. 3 MS. MCGAURAN: I think we agreed 4 that they can be included. And the goal of the 5 rules is to show that we're intending to include 6 them. 7 CHAIRMAN PHILLIPS: Right. 8 MR. WRIGHT: So what does that 9 mean? Are we good? 10 CHAIRMAN PHILLIPS: It just means 11 we're good. 12 MS. MCGAURAN: There isn't a vote 13 to change the rules right now. 14 CHAIRMAN PHILLIPS: No. 15 MS. MCGAURAN: Unless you want to 16 make that motion. 17 MR. CRABTREE: I would like to 18 defer it, personally, until I can have 19 Mr. Reinbold here and speak for himself. But if 20 you have to move forward, then okay. 21 MS. MCGAURAN: I think we can -- 22 CHAIRMAN PHILLIPS: But I think we 23 can move forward, and there's no harm done from 24 moving forward. And it can be revisited later, as 25 I understand it.</p>
<p style="text-align: right;">Page 20</p> <p>1 MR. CRABTREE: Now, currently, we 2 are not putting state wage rate in locally managed 3 projects. Are you telling me that we've got to 4 start doing that now? 5 MR. BAILEY: Yes. 6 MS. MCGAURAN: Yes. 7 CHAIRMAN PHILLIPS: Now, you can 8 make a motion to change it and we can vote on it, 9 but... 10 MS. MCGAURAN: And my position 11 comes down to what the definition is of a state 12 highway construction project. And a state highway 13 project means any construction project for the 14 purpose of building, rebuilding, locating, 15 relocating, or repairing any public highway. And 16 a public highway is defined as any street, road, 17 highway, expressway, bridge, or viaduct, including 18 an adjacent right of way that is constructed or 19 maintained by the State or any municipality or 20 political subdivision of the state that is funded 21 in whole or in part with federal or state highway 22 funds. 23 CHAIRMAN PHILLIPS: Right. 24 MR. CRABTREE: That's why we need 25 Mr. Reinbold here --</p>	<p style="text-align: right;">Page 21</p> <p>1 MS. MCGAURAN: And that's the core. 2 MR. CRABTREE: -- and not me. But 3 Mr. Reinbold, as I understand it, his reading is 4 that it has to be a contract with the State. 5 MR. BAILEY: Right. That's his -- 6 and I totally understand it. And I also 7 understand how statutes, the wording of statutes, 8 can be ambiguous at times, and I think this one 9 is. I think the intent was for it to apply to 10 local road projects; however, they didn't make 11 that as clearly as they could have made it with 12 the language of state contracts. I mean, you 13 know, they could have made it much clearer, I 14 agree. 15 But typically, when there's ambiguity 16 in the statute, a court will interpret the statute 17 so that all the words have meaning. And to say it 18 does not apply to a local road project that is 19 partly funded by the State or federal government, 20 would take those words and render them 21 meaningless. 22 CHAIRMAN PHILLIPS: It's contrary 23 to the wording of the statute. 24 MR. BAILEY: Yes. 25 CHAIRMAN PHILLIPS: And the courts</p>

<p style="text-align: right;">Page 22</p> <p>1 won't do that.</p> <p>2 MR. WRIGHT: But, Wayburn, I think,</p> <p>3 right now we're not being asked to vote on this.</p> <p>4 It's already in the rules.</p> <p>5 CHAIRMAN PHILLIPS: Yeah. We're</p> <p>6 just --</p> <p>7 MR. WRIGHT: What you hear is a</p> <p>8 little bit interpretation, a difference of</p> <p>9 interpretation of whether or not TDOT should</p> <p>10 require the use -- I mean, if a county was to</p> <p>11 be --</p> <p>12 Did I hear you correct, Mr. Bailey,</p> <p>13 when you said that you think the prevailing wage</p> <p>14 should be applicable to a state or a local</p> <p>15 project? Is that what I understand?</p> <p>16 MR. BAILEY: A local road project,</p> <p>17 yes.</p> <p>18 MR. WRIGHT: But if you give them</p> <p>19 any funding, then that means you would -- do you</p> <p>20 currently tell them to use it or not, or do you</p> <p>21 even comment on it? I don't know how that works.</p> <p>22 That's beyond my ability to understand.</p> <p>23 MS. MCGAURAN: I guess --</p> <p>24 MR. BAILEY: That's a good</p> <p>25 question.</p>	<p style="text-align: right;">Page 23</p> <p>1 MR. WRIGHT: If Bradley County was</p> <p>2 to let a local project that they did not do</p> <p>3 themselves to contract and y'all give them money</p> <p>4 every year, programmed money, are they required</p> <p>5 currently to use the state prevailing wage, or</p> <p>6 does the Department really say anything other than</p> <p>7 here's your check?</p> <p>8 MR. CRABTREE: It depends on what</p> <p>9 kind of project it is.</p> <p>10 MR. WRIGHT: Okay.</p> <p>11 MR. CRABTREE: If it's what we call</p> <p>12 state aid, we don't tell them what to do. Now, if</p> <p>13 it's one of these --</p> <p>14 MR. WRIGHT: Is an SAI road state</p> <p>15 aid?</p> <p>16 MR. CRABTREE: No.</p> <p>17 MR. WRIGHT: Because that comes</p> <p>18 through you.</p> <p>19 MR. CRABTREE: No. No. Under</p> <p>20 the -- like, the bridge grant program.</p> <p>21 MR. WRIGHT: Okay.</p> <p>22 MR. CRABTREE: If it's money that</p> <p>23 comes through NPOs and RPOs and things like that,</p> <p>24 that TDOT oversees and ensures that whatever they</p> <p>25 do with it complies with federal regs and our</p>
<p style="text-align: right;">Page 24</p> <p>1 regs, we give them the choice. We tell them they</p> <p>2 don't have to use the state wage rates -- because</p> <p>3 99 percent of them have the federal rates anyway.</p> <p>4 We tell them they don't have to if they want you</p> <p>5 to use the current ones.</p> <p>6 And I've got one right now we're</p> <p>7 fixing to recheck because they didn't do that.</p> <p>8 They used the 2017 wage rates, and we told them</p> <p>9 not to. They did it anyway so we're going to let</p> <p>10 it again.</p> <p>11 MR. WRIGHT: I don't think y'all</p> <p>12 disagree.</p> <p>13 MS. MCGAURAN: I think the concern</p> <p>14 is, is that in their policy when TDOT is giving</p> <p>15 money or granting money to municipalities, that's,</p> <p>16 kind of -- to use the expression -- that's the dog</p> <p>17 they have in this hunt, right? It doesn't have to</p> <p>18 do with the projects they directly manage at all.</p> <p>19 They were very clearly included in the statute.</p> <p>20 CHAIRMAN PHILLIPS: Right.</p> <p>21 MS. MCGAURAN: And it has to do</p> <p>22 with the requirements that they're putting on</p> <p>23 those entities that they're giving grants to.</p> <p>24 CHAIRMAN PHILLIPS: Yeah, they're</p> <p>25 receiving funding.</p>	<p style="text-align: right;">Page 25</p> <p>1 MR. CRABTREE: And that's kind of a</p> <p>2 technicality there, too, because many times it's</p> <p>3 not TDOT money; it's federal grant money.</p> <p>4 MS. MCGAURAN: But you're -- that</p> <p>5 your administering on their behalf.</p> <p>6 MR. CRABTREE: Well, are we</p> <p>7 administering or are we just ensuring that they</p> <p>8 abide by the federal regs?</p> <p>9 CHAIRMAN PHILLIPS: You're just</p> <p>10 making sure -- you're ensuring compliance, is all</p> <p>11 you're doing.</p> <p>12 MS. MCGAURAN: But you're granting,</p> <p>13 essentially, on behalf of everybody.</p> <p>14 MR. CRABTREE: I don't know if we</p> <p>15 are or not. Same thing with NPOs and RPOs.</p> <p>16 That's not our money. That's not TDOT money.</p> <p>17 That's federal money that's allocated to the</p> <p>18 states or the counties and municipalities via the</p> <p>19 NPO or RPO, whichever one it is, so...</p> <p>20 MR. WRIGHT: But doesn't this --</p> <p>21 the law that we're being asked to enforce today</p> <p>22 here, it does say federal or state money. So it's</p> <p>23 kind of an overlap, you know.</p> <p>24 MR. CRABTREE: Well, all of those</p> <p>25 projects have the federal wage rates anyway. So</p>

<p style="text-align: right;">Page 26</p> <p>1 what we're currently doing on those type projects 2 is we're giving the municipalities the option of 3 including the state wage rates and telling them 4 they don't have to, because they're not going to 5 be enforced if they do. 6 CHAIRMAN PHILLIPS: But you said 7 99 percent of them use the federal, right? 8 MR. WRIGHT: Is the federal the -- 9 MR. CRABTREE: The only ones that 10 don't that I'm aware of are the multi-multiple 11 projects where we put benches at bus stops and 12 trashcans and stuff like that. That's a hundred 13 percent state money. So those are few and far 14 between. 15 But just about all the rest of them 16 either have federal grant money or they have some 17 kind of federal money through the RPOs and NPOs. 18 MR. WRIGHT: Just for my curiosity, 19 on the ones you've seen, do the federal rates in 20 these projects -- how do they compare to what we 21 publish? 22 MR. CRABTREE: They're lower. 23 MR. WRIGHT: They're lower. Okay. 24 So if we publish it, the costs are going up, I 25 mean, if you forced them to use it.</p>	<p style="text-align: right;">Page 27</p> <p>1 MR. CRABTREE: Uh-huh. 2 MS. MCGAURAN: And you did check to 3 see -- 4 MR. WRIGHT: Then I'm kind of on 5 the side of the worker, honestly. 6 MS. MCGAURAN: And you did check to 7 see if -- 8 MR. WRIGHT: Are we charged to look 9 out for the worker, too? 10 MS. MCGAURAN: -- Mr. Reinbold 11 could be present at this meeting? He had a 12 conflict and -- 13 CHAIRMAN PHILLIPS: We're charged 14 to try to interpret the law. 15 MS. MCGAURAN: -- there's no way he 16 could be here? 17 MR. CRABTREE: I can't say that. 18 He didn't want to come. 19 MS. MCGAURAN: So he -- 20 MR. CRABTREE: He wasn't invited. 21 CHAIRMAN PHILLIPS: Who wasn't 22 invited? 23 MS. MCGAURAN: So I said -- I asked 24 if he -- 25 CHAIRMAN PHILLIPS: John? Well,</p>
<p style="text-align: right;">Page 28</p> <p>1 anybody can come. 2 MS. MCGAURAN: -- if Mr. Reinbold 3 had a conflict, and that's the reason he's not 4 here. And I'm not hearing that there's a 5 definitive understanding that he was asked to come 6 or he stated an interest in coming but said he 7 couldn't come because he had something else he had 8 to be at. 9 MR. CRABTREE: I don't know. 10 MS. MCGAURAN: Okay. Would you -- 11 would it make sense to reach out to your office 12 and ask Mr. Reinbold if he's available to attend 13 the meeting before the end of it, and then we can 14 revisit this at the end of this meeting, go 15 back -- and go forward with the rest of the action 16 items? 17 MR. CRABTREE: I'll call him. 18 MS. JEFFERSON: And worst-case 19 scenario, we do have a telephone here, so we can 20 actually call and put him on a conference call. 21 CHAIRMAN PHILLIPS: We're going to 22 go into recess. 23 (Recess observed.) 24 CHAIRMAN PHILLIPS: So we'll resume 25 the commission meeting while we're waiting for</p>	<p style="text-align: right;">Page 29</p> <p>1 Mr. Reinbold to get in touch with us. 2 And so we'll take up the next Old 3 Business item, which is Approve Blaster-in-Charge/ 4 Blaster Assistant. There was the suggestion made 5 to modify that. 6 MR. WRIGHT: Did my suggestions 7 make sense? 8 MS. MCGAURAN: They did to me. 9 CHAIRMAN PHILLIPS: Yes. 10 MR. WRIGHT: Kim? 11 MS. JEFFERSON: Yes. 12 MR. WRIGHT: Mr. Bailey, did -- you 13 know, just a 30-second pitch for that is, I think, 14 if we're going to put a description there, we 15 should -- I think we should somewhat be harmonious 16 with the state blasting laws as they apply 17 because, as I think I was telling Wayburn before 18 we started the session, that a blaster that worked 19 for the gentleman that was here last time, he has 20 to be a licensed blaster to sign those shop 21 reports, to lay those out to comply with the law 22 to be insurable. And that is a federal process 23 that requires review, background checks. 24 All of this is tightened up since 25 911. They make a true effort to keep up with it</p>

<p style="text-align: right;">Page 30</p> <p>1 more so than they did. And to the extent of the 2 blaster, the -- what did we call it? -- assistant 3 blaster --</p> <p>4 MR. BAILEY: It's blaster 5 assistant.</p> <p>6 MR. WRIGHT: The blaster assistant, 7 I'm sorry. Then, you know, that really equates to 8 a helper or a handler, rather, under the federal 9 blasting laws in the Tennessee definitions, 10 because that's a person that assists a blaster. 11 The blaster takes responsibility and these other 12 folks assist them, and it is -- I think it's a 13 crime for the blaster or the person in charge, 14 which, like, in our company is me, you know, that 15 signs on the ATF license to allow somebody that is 16 not an approved handler to even be involved with 17 the blast itself.</p> <p>18 So, you know, for us to approve a 19 position that doesn't require them to meet the 20 standards of the federal law and the state law, to 21 me, is a mistake, I guess.</p> <p>22 MR. BAILEY: So just so I'm clear, 23 first of all, on the blaster-in-charge position, I 24 think you were questioning whether or not words 25 "and assist" should stay in.</p>	<p style="text-align: right;">Page 31</p> <p>1 MR. WRIGHT: Well, that's -- I 2 started off there, and then I went off on this 3 whole other tangent.</p> <p>4 MR. BAILEY: Okay. So is the 5 wording of "Blaster-in-Charge" okay?</p> <p>6 MR. WRIGHT: Yes.</p> <p>7 MR. BAILEY: Okay. So --</p> <p>8 MR. WRIGHT: Actually, I would 9 change it to what the State of Tennessee calls it, 10 the "Blaster." I would make that title match. If 11 I just had carte blanche, it would be to make the 12 titles match the same thing as they do on this 13 Tennessee --</p> <p>14 MS. MCGAURAN: 68-105-102.</p> <p>15 MR. WRIGHT: Yeah. It would be the 16 same as 68-105-102, paragraph 6, Blaster.</p> <p>17 MR. BAILEY: Okay. So you're 18 saying to just call it "Blaster" --</p> <p>19 MR. WRIGHT: Blaster.</p> <p>20 MR. BAILEY: -- and use this 21 definition.</p> <p>22 MR. WRIGHT: And use this 23 definition out of the law.</p> <p>24 MR. BAILEY: Okay. All right. And 25 then for the --</p>
<p style="text-align: right;">Page 32</p> <p>1 MR. WRIGHT: And then for the 2 assistant would be a -- you know, the law calls it 3 a "Handler," I believe.</p> <p>4 MS. JEFFERSON: It does.</p> <p>5 MR. BAILEY: Well, there's two 6 different classifications that Mr. Crabtree was 7 pointing out, kind of apply.</p> <p>8 MR. WRIGHT: Yes, sir. And the 9 handler was the one that we were putting under 10 skilled labor; is that correct?</p> <p>11 MS. MCGAURAN: Yes.</p> <p>12 MR. WRIGHT: So whatever 13 subparagraph, if you would do 10 -- 68-105-102 14 paragraph 15 for what is called a handler.</p> <p>15 MR. BAILEY: Well, okay. He was 16 kind of combining that with -- handler with 17 limited blaster.</p> <p>18 Weren't you kind of combining those 19 two?</p> <p>20 MR. CRABTREE: Yes, sir. It looks 21 like you're kind of losing a -- not a worker, but 22 somebody to do that work under the blaster-in- 23 charge if all you have is a handler, because all 24 he can do is just handle.</p> <p>25 MR. WRIGHT: What about the</p>	<p style="text-align: right;">Page 33</p> <p>1 assistant?</p> <p>2 MR. CRABTREE: You still would need 3 the guy that works under the blaster-in-charge to 4 do the same thing with limitations.</p> <p>5 MR. WRIGHT: Well, a handler does 6 everything that the blaster can allow them to do. 7 A handler, if he works for the blaster, can pretty 8 much do anything.</p> <p>9 MR. CRABTREE: That's not what it 10 says.</p> <p>11 MR. WRIGHT: No. It says to accept 12 custody and possession of the explosives in the 13 blasting operations. That means he's allowed to 14 pick it up and do with it what the blaster tells 15 him to do. If he says, "Go poke it in the hole," 16 that's what they do.</p> <p>17 MS. MCGAURAN: So where is the 18 other --</p> <p>19 MS. JEFFERSON: It's Number 17.</p> <p>20 MS. MCGAURAN: I see the blaster is 21 under the classification of covered workers, but 22 where is --</p> <p>23 MR. CRABTREE: Limited blaster 17. 24 Is that what you're looking for?</p> <p>25 MS. MCGAURAN: 17. But where is it</p>

<p style="text-align: right;">Page 34</p> <p>1 in our rules?</p> <p>2 MR. WRIGHT: It is called assistant</p> <p>3 blaster.</p> <p>4 MR. BAILEY: Oh, it's at 18,</p> <p>5 paragraph iii, in the red-line version -- well,</p> <p>6 either version, actually.</p> <p>7 MR. WRIGHT: Wayburn, respectfully,</p> <p>8 I would tell you that the limited blaster is</p> <p>9 designed for the guy that's going to go -- is a</p> <p>10 thing that you can apply for that you do not have</p> <p>11 to take all the tests to understand the</p> <p>12 sophistication of blasting because you're going to</p> <p>13 just go blow a stump out. You can only hold five</p> <p>14 pounds. And see that won't load one hole in one</p> <p>15 shot. It's just irrelevant to what anybody does</p> <p>16 in the construction industry, if that makes any</p> <p>17 sense. You can blow one --</p> <p>18 MR. CRABTREE: Yeah. My simplistic</p> <p>19 reading of this was that a handler could only</p> <p>20 handle explosives. He couldn't load the holes or</p> <p>21 much less fire them, but if you're understanding</p> <p>22 that he can, then --</p> <p>23 MR. WRIGHT: The handler should not</p> <p>24 fire them. The law is specific that the blaster</p> <p>25 has to do that. The guy that's signing the -- you</p>	<p style="text-align: right;">Page 35</p> <p>1 know, you have to fill out a shot report with</p> <p>2 every blast, and the guy that signs that report</p> <p>3 has got to be like the --</p> <p>4 MR. CRABTREE: So the handler can</p> <p>5 load them.</p> <p>6 MR. WRIGHT: The handler can do</p> <p>7 anything he tells them to except sign that report,</p> <p>8 and really shouldn't push that button.</p> <p>9 MS. MCGAURAN: Can I ask a question</p> <p>10 as we look at the terms? So in the definitions,</p> <p>11 there seems to be a blaster defined in -- I'm</p> <p>12 looking at 68-105-102 of TCA. A blaster seems to</p> <p>13 be defined as somebody who has to be registered,</p> <p>14 has the registration to fire a detonated</p> <p>15 explosive.</p> <p>16 A limited blaster is somebody who has</p> <p>17 the knowledge and, again, has a registration to</p> <p>18 fire but only within certain set limits.</p> <p>19 MR. WRIGHT: Five pounds.</p> <p>20 MS. MCGAURAN: Yeah, five pounds.</p> <p>21 Is there another person on the blasting team</p> <p>22 that's kind of a subset of that?</p> <p>23 MR. WRIGHT: Yeah. Look up to</p> <p>24 Number 15.</p> <p>25 MR. BAILEY: The handler, 15.</p>
<p style="text-align: right;">Page 36</p> <p>1 MS. MCGAURAN: 15, the handler.</p> <p>2 Okay.</p> <p>3 MR. WRIGHT: The handler. See,</p> <p>4 what the gentleman was asking for, he's got a</p> <p>5 blaster-in-charge, and he's -- but what he didn't</p> <p>6 want to have to do is take -- his company was</p> <p>7 telling him that anybody they sent out there,</p> <p>8 which I bet you they may very well be blasters,</p> <p>9 but he -- they were making them pay the blaster</p> <p>10 rate for everything instead of taking the skilled</p> <p>11 labor that was just help that day.</p> <p>12 And a handler, you know, one of the</p> <p>13 huge challenges -- I think it's odd this morning</p> <p>14 they were in the office redoing our federal</p> <p>15 blasting license for one of the companies. So I</p> <p>16 was listening to all this. I went, uh, shoot me.</p> <p>17 But to touch the explosives, you have to -- ATF</p> <p>18 has to have your name on a list. If the ATF comes</p> <p>19 out and inspects you while you're loading a blast</p> <p>20 and you're holding a stick of dynamite, I'm in</p> <p>21 violation of the law.</p> <p>22 And so by definition, it doesn't</p> <p>23 matter what we tell them, as far as skilled labor.</p> <p>24 They really need to be qualified to be a handler</p> <p>25 to be of any practical assistance to the blaster.</p>	<p style="text-align: right;">Page 37</p> <p>1 MS. MCGAURAN: Okay. So we have</p> <p>2 three categories, right?</p> <p>3 MR. WRIGHT: No. We really only</p> <p>4 have two. The limited blasters for farm guys is</p> <p>5 really what it's for. If you have a stump on your</p> <p>6 farm and you want to go blow it out, then you can</p> <p>7 go to the ATF office and tell them what you're</p> <p>8 going to do, and they'll check you out --</p> <p>9 MS. MCGAURAN: So we have a</p> <p>10 handler.</p> <p>11 MR. WRIGHT: -- and let you have --</p> <p>12 MS. MCGAURAN: So what you're</p> <p>13 proposing --</p> <p>14 CHAIRMAN PHILLIPS: So the only</p> <p>15 difference is the five pounds.</p> <p>16 MR. WRIGHT: Yeah. He can only buy</p> <p>17 five pounds at a time.</p> <p>18 MS. MCGAURAN: So what you're</p> <p>19 proposing -- I just want to make sure I hear this</p> <p>20 correctly -- is that the 800-03-02-.02</p> <p>21 classification 1A1, which now says Blaster-in-</p> <p>22 Charge be changed to Blaster, and the definition</p> <p>23 meet the definition of a blaster in the code.</p> <p>24 MR. WRIGHT: Yes, ma'am.</p> <p>25 MS. MCGAURAN: And you're</p>

<p style="text-align: right;">Page 38</p> <p>1 suggesting that under 18(iii), Blaster Assistant 2 be changed to the word Handler. 3 MR. BAILEY: No. 4 MR. WRIGHT: Well, that would be my 5 suggestion, but it doesn't -- 6 MS. MCGAURAN: That it be changed 7 to Handler and that the Handler definition -- 8 MR. WRIGHT: Or if you say that -- 9 it says meets the requirements of handler under -- 10 MR. BAILEY: Yeah. I thought -- 11 MR. WRIGHT: That's what I wrote. 12 MR. BAILEY: Yeah. I thought we 13 were just going to use the definition of handler 14 but still call it Blaster Assistant. 15 MR. WRIGHT: It doesn't matter to 16 me. 17 MS. MCGAURAN: Well, we need to 18 ask -- we need to include something that says it 19 meets the requirement of handler. 20 MR. WRIGHT: It would be much 21 clearer to the lady that's fixing the payroll that 22 was here last time if we get the word "Handler" in 23 there somewhere so they'll -- because the people 24 interpreting from the office side of it, "Handler" 25 means something to my payroll people. "Blasting</p>	<p style="text-align: right;">Page 39</p> <p>1 Assistant" means nothing. 2 MR. BAILEY: Well, I mean, we can 3 change it to Handler if that's what you think. 4 MR. WRIGHT: I think it -- then it 5 perfectly matches the law. 6 MR. BAILEY: Okay. It just means I 7 would have to move it somewhere else to keep it 8 alphabetically correct and renumber all the 9 paragraphs. 10 MR. WRIGHT: Oh, well -- 11 MR. BAILEY: That's all. 12 MR. WRIGHT: I'm very sorry. 13 MS. MCGAURAN: Well, and you can 14 call it "Blaster Assistant" as long as in the 15 description it says it meets the requirements of 16 Handler. 17 MR. BAILEY: Yeah, but we'll -- 18 still, your payroll person is going to see Blaster 19 Assistant and they're not going to understand it. 20 MR. WRIGHT: Well, they'll read it 21 out there. I mean, if -- you just need to -- we 22 need to be sure that it says at least the 23 definition of a Handler. Or if you call it 24 Handler, then you don't have to say that. But it 25 doesn't matter, as far as I'm concerned. But I</p>
<p style="text-align: right;">Page 40</p> <p>1 just think we should be consistent with the law. 2 The closer the better. 3 MR. BAILEY: I can do it either 4 way. However you-all think. 5 MR. WRIGHT: Well, if I get to 6 pick, do "Handler." 7 MR. BAILEY: Change it to Handler? 8 MR. WRIGHT: Yes. 9 MR. BAILEY: Okay. 10 MR. WRIGHT: Then we'll be straight 11 up where you can just mail them this piece of 12 paper with it when they don't know what to do. 13 CHAIRMAN PHILLIPS: He has to make 14 a motion of that, does he not? 15 MR. WRIGHT: Yeah. Please consider 16 that a motion, that last 30 minutes. 17 CHAIRMAN PHILLIPS: Okay. 18 MS. MCGAURAN: I'll second that 19 motion. 20 CHAIRMAN PHILLIPS: Okay. So we 21 have a motion. Do we have any more discussion 22 before we vote? 23 MS. MCGAURAN: And the motion 24 includes to -- 25 CHAIRMAN PHILLIPS: Do you want to</p>	<p style="text-align: right;">Page 41</p> <p>1 repeat your motion? 2 MS. MCGAURAN: Well, I just want to 3 make sure. The motion says that we're going to 4 change what currently says "Blaster-in-Charge" to 5 be "Blaster." And we're going to change what 6 currently says "Assistant" -- "Blaster Assistant" 7 to "Handler." And we're going to change the 8 definitions of those two terms to match what is in 9 68-105-102 chapter definitions. 10 CHAIRMAN PHILLIPS: Yes. 11 MS. MCGAURAN: And that's the 12 motion. 13 MR. WRIGHT: Yes, ma'am. 14 MS. MCGAURAN: Okay. 15 CHAIRMAN PHILLIPS: All in favor? 16 (Affirmative response.) 17 CHAIRMAN PHILLIPS: Motion carries. 18 Did you get all that? 19 THE REPORTER: Yes. 20 MS. MCGAURAN: Thank you for your 21 work on that. 22 MR. WRIGHT: You're welcome. 23 CHAIRMAN PHILLIPS: Okay. The next 24 order of Old Business is approval of proposed 25 rules. Do we have a motion to approve?</p>

<p style="text-align: right;">Page 42</p> <p>1 MR. BAILEY: Well --</p> <p>2 MS. MCGAURAN: We're going to wait.</p> <p>3 CHAIRMAN PHILLIPS: We're going to</p> <p>4 wait --</p> <p>5 MR. BAILEY: We can't really do</p> <p>6 that until we --</p> <p>7 CHAIRMAN PHILLIPS: Because of</p> <p>8 John, right?</p> <p>9 MS. MCGAURAN: Yes.</p> <p>10 CHAIRMAN PHILLIPS: All right. So</p> <p>11 next would be review and discuss the approved 2019</p> <p>12 prevailing wage rates for state highway</p> <p>13 construction projects. But am I of the</p> <p>14 understanding that this is no longer an issue to</p> <p>15 discuss four miscalculated rates?</p> <p>16 MS. JEFFERSON: Actually, right.</p> <p>17 Discussion of those four miscalculated rates,</p> <p>18 that's a nonissue because the auditors actually</p> <p>19 reviewed those four for us, and they determined</p> <p>20 that the Commission's interpretation was correct.</p> <p>21 CHAIRMAN PHILLIPS: Okay.</p> <p>22 MR. WRIGHT: That's cool.</p> <p>23 MS. MCGAURAN: That's cool. We're</p> <p>24 a good bunch.</p> <p>25 MR. WRIGHT: And it's also nice</p>	<p style="text-align: right;">Page 43</p> <p>1 that the auditors say that.</p> <p>2 MS. JEFFERSON: Yes. Yes.</p> <p>3 CHAIRMAN PHILLIPS: Okay. So then</p> <p>4 next would be compare and contrast surveys that</p> <p>5 were previously excluded.</p> <p>6 Which rates would the Commission</p> <p>7 prefer to approve? I think you've got two</p> <p>8 spreadsheets, do we not?</p> <p>9 MS. MCGAURAN: Yes.</p> <p>10 CHAIRMAN PHILLIPS: And so you've</p> <p>11 got 2 and 3 at the top. It says Prevailing Wage</p> <p>12 Calculation Spreadsheet 2 of 3,</p> <p>13 Commission-approved rates. And then you've got</p> <p>14 the rates of the new spreadsheet that includes</p> <p>15 surveys previously excluded, which would be page 3</p> <p>16 of 3 at the top. It says at the top Prevailing</p> <p>17 Wage Calculation Spreadsheet 3 of 3, and the other</p> <p>18 one is Prevailing Wage Calculation Spreadsheet</p> <p>19 page 2 of 3.</p> <p>20 MS. MCGAURAN: Is this something</p> <p>21 you provided or something I printed?</p> <p>22 CHAIRMAN PHILLIPS: You've got it.</p> <p>23 Oh, wait. No, that doesn't look right.</p> <p>24 MS. CAUDILL: It's in your book</p> <p>25 already. Because you left your book at the last</p>
<p style="text-align: right;">Page 44</p> <p>1 meeting.</p> <p>2 MS. MCGAURAN: That's what I'm</p> <p>3 trying to figure out. Okay.</p> <p>4 CHAIRMAN PHILLIPS: And so the</p> <p>5 question is which rates would the Commission</p> <p>6 prefer to approve of these two sets.</p> <p>7 MR. CRABTREE: Well, my preference</p> <p>8 would be to approve 3 of 3, if it means that's</p> <p>9 where we're giving those who did not have a</p> <p>10 sufficient number of responses the same raise as</p> <p>11 we were giving everybody else.</p> <p>12 CHAIRMAN PHILLIPS: Right. Because</p> <p>13 that doesn't -- that would include those</p> <p>14 previously excluded, so yes, right?</p> <p>15 MS. JEFFERSON: Yes.</p> <p>16 CHAIRMAN PHILLIPS: Okay. Are you</p> <p>17 making a motion?</p> <p>18 MR. CRABTREE: I move that we</p> <p>19 approve spreadsheet 3 of 3.</p> <p>20 CHAIRMAN PHILLIPS: Okay. Any</p> <p>21 other discussion? Second on that?</p> <p>22 MR. WRIGHT: Second.</p> <p>23 CHAIRMAN PHILLIPS: Any other</p> <p>24 discussion?</p> <p>25 MS. MCGAURAN: Just let me review</p>	<p style="text-align: right;">Page 45</p> <p>1 it just a -- just give me a pause.</p> <p>2 MR. WRIGHT: Yeah, I need to read</p> <p>3 it.</p> <p>4 Which ones were the codes that were</p> <p>5 in question, please, Kim?</p> <p>6 MS. JEFFERSON: The ones in red.</p> <p>7 The ones in red except for the last two.</p> <p>8 MS. CAUDILL: Except Number 11.</p> <p>9 MS. JEFFERSON: 11 and -- there was</p> <p>10 one more, because there were six total.</p> <p>11 MR. WRIGHT: Let me ask this</p> <p>12 differently. Did anything change between 2 and 3?</p> <p>13 MS. CAUDILL: What changed was when</p> <p>14 we added back in -- when we had denied nine of</p> <p>15 Mr. Summers' surveys, he resubmitted eight of</p> <p>16 those. So that threw the state average and -- it</p> <p>17 threw the whole thing off. But it went from 4.69</p> <p>18 down to 4.38, so really all the numbers changed.</p> <p>19 But the ones in question are still the current</p> <p>20 rate plus or minus the 6 percent.</p> <p>21 MR. WRIGHT: Okay. So they're all</p> <p>22 in compliance.</p> <p>23 MS. CAUDILL: Yes.</p> <p>24 MR. WRIGHT: But it changed the</p> <p>25 amount of -- it raised last year's survey up</p>

<p style="text-align: right;">Page 46</p> <p>1 enough that we lowered what we're actually 2 raising. Is that what I heard you say? 3 MS. CAUDILL: Yes. I mean, for 4 example, like, on Number 2, you had originally 5 approved on 2 of 3, 19.90. 6 MR. WRIGHT: Yes. 7 MS. CAUDILL: And the difference in 8 the survey after those eight were added back in, 9 it went to 1984. And that's what's shown on 3 of 10 3 on classification Number 2. So it was pennies. 11 MR. WRIGHT: Everything is within 12 pennies of where it was. 13 MS. CAUDILL: Yes. 14 MR. WRIGHT: Except 11. 15 MR. CRABTREE: I thought our plan 16 there last time was to raise the ones that did not 17 have sufficient responses by the same amount. I 18 notice here we've got them at 6 percent instead of 19 the average. 20 MS. JEFFERSON: Actually, what we 21 did in the worksheet 3 of 3, we took a look at the 22 same formula you-all used to come to the same 23 calculations and the approved worksheet from the 24 last meeting. And we basically used the same 25 calculation that you-all used. Whatever you -- if</p>	<p style="text-align: right;">Page 47</p> <p>1 you used the average, then we use the state 2 average. If you used the current rate, we just 3 basically modeled what you-all did from 1 to 25 in 4 the second spreadsheet. 5 So whatever you-all -- do you 6 understand what I'm saying? So whatever -- 7 MS. MCGAURAN: Once the 8 calculations changed, you just picked the same 9 categories we had picked. 10 MS. JEFFERSON: Exactly. And if 11 you want to take a look at one of them to kind of 12 compare it, you can do that. We can take a look 13 at -- which one would you-all like to look at? 14 MR. CRABTREE: Number 1. 15 MS. JEFFERSON: Bricklayer? So 16 we're going to go through those calculations. 17 Let's just have you-all go through the 18 calculations for that. Let's take a look at 2 of 19 3. 20 Ann, do you-all have your calculators 21 there? 22 MS. MCGAURAN: Uh-huh. 23 MS. JEFFERSON: We're going to go 24 through the formula, and then we'll do the 3 of 3. 25 So let us know when you're ready, because we're</p>
<p style="text-align: right;">Page 48</p> <p>1 going to go through it. 2 Are you ready? 3 MR. NEALY: Yes. 4 MS. JEFFERSON: Commissioner, are 5 you-all ready? 6 CHAIRMAN PHILLIPS: Yes. Well -- 7 they're going to go through it. 8 MR. NEALY: For bricklayer, the 9 current prevailing wage rate is \$15.47 times the 10 6 percent gives you 0.93. You take \$15.47 and you 11 add 0.93, it gives you \$16.40 on the maximum side. 12 MS. CAUDILL: And then if you 13 subtract it on the lower side, it will give you 14 \$14.54. 15 MS. JEFFERSON: And the rate that 16 they selected, the commission selected, was \$16.20 17 last week, and that's within the range. 18 CHAIRMAN PHILLIPS: It's within the 19 range. 20 MS. JEFFERSON: And let's do the 21 second spreadsheet, the same one, bricklayer. 22 MR. NEALY: All right. The same 23 one? 24 MR. WRIGHT: Column Q on 2 of 3 is 25 what we approved last time; is that correct? So</p>	<p style="text-align: right;">Page 49</p> <p>1 that's what I need to be comparing -- 2 MS. MCGAURAN: Well, actually, on 3 the bricklayer, what we approved last time was the 4 equivalent of the current prevailing wage rate 5 plus the state average. 6 MR. CRABTREE: Yes. 7 MS. MCGAURAN: So we -- 8 MR. WRIGHT: Which was \$16.20. 9 MS. MCGAURAN: Which would have 10 been \$16.40 under this category, \$15.47. 11 MS. JEFFERSON: Ann, if you'll take 12 a look at Column Q on 2 of 3, that's what we 13 recorded, \$16.20 as the amount approved by the 14 commission. 15 MS. MCGAURAN: Right. But \$16.20 16 on our prior spreadsheet aligned with what was 17 then Column L, which was our current prevailing 18 wage rate plus the state average, which would be 19 the same, I think, as Column M. 20 I don't know why you guys swapped 21 Column L and M on this time versus last time, but 22 you did. But I think it would be the equivalent 23 of Column M, which is the current prevailing wage 24 rate plus the state average. 25 MR. CRABTREE: Which would be</p>

<p style="text-align: right;">Page 50</p> <p>1 \$16.15.</p> <p>2 MS. CAUDILL: \$16.15.</p> <p>3 MR. CRABTREE: \$16.15 if you add</p> <p>4 0.68 to \$15.47, it would be \$16.15.</p> <p>5 MS. MCGAURAN: Why would it be</p> <p>6 \$16.15 and not \$16.40?</p> <p>7 MR. CRABTREE: If we add the</p> <p>8 current -- if we add the average --</p> <p>9 MR. WRIGHT: If you look at</p> <p>10 L & M --</p> <p>11 MR. CRABTREE: -- in K would be</p> <p>12 0.68. So if we would add 0.68 to the current</p> <p>13 rate, it would be \$16.15.</p> <p>14 MR. WRIGHT: The last -- without</p> <p>15 the addition --</p> <p>16 MS. CAUDILL: You can use the state</p> <p>17 average if you want. It will still fall within</p> <p>18 the proper range.</p> <p>19 MR. CRABTREE: Well, that's what I</p> <p>20 thought we were doing last time. We were raising</p> <p>21 the ones without -- with insufficient responses by</p> <p>22 the same amount that we were raising all the</p> <p>23 others, not by more.</p> <p>24 MS. MCGAURAN: When I look at my</p> <p>25 spreadsheet from last time, it appears that in</p>	<p style="text-align: right;">Page 51</p> <p>1 every case, we raised it by the current prevailing</p> <p>2 wage rate plus the state average or more. We</p> <p>3 never at any point went below the current</p> <p>4 prevailing wage rate plus the state average.</p> <p>5 MR. CRABTREE: Yes, that's right.</p> <p>6 MR. WRIGHT: I think that's right.</p> <p>7 And the state average changed with the addition of</p> <p>8 Rab's stuff. So the state average in 3 of 3 is</p> <p>9 4.38 percent, and it was 4.69 percent before that.</p> <p>10 MS. MCGAURAN: Right.</p> <p>11 MR. CRABTREE: And 4.38 percent is</p> <p>12 0.68, which added to the current rate of \$15.47,</p> <p>13 if I've done my arithmetic right, would be \$16.15,</p> <p>14 not \$16.40.</p> <p>15 MS. JEFFERSON: Okay. And if</p> <p>16 you'll --</p> <p>17 MS. MCGAURAN: Why not \$16.40?</p> <p>18 MR. CRABTREE: What would be the</p> <p>19 basis for giving them a larger raise just because</p> <p>20 we didn't have sufficient records, more than we</p> <p>21 gave the ones that we did have sufficient records?</p> <p>22 MS. MCGAURAN: So what you're</p> <p>23 saying, though, is that the math on this</p> <p>24 spreadsheet is wrong.</p> <p>25 MR. WRIGHT: Wrong. Yeah.</p>
<p style="text-align: right;">Page 52</p> <p>1 MR. CRABTREE: No.</p> <p>2 MS. MCGAURAN: Yes. That's what</p> <p>3 you just said.</p> <p>4 MR. CRABTREE: Well, okay.</p> <p>5 MS. JEFFERSON: On which one?</p> <p>6 MS. MCGAURAN: They're talking</p> <p>7 about bricklayer, and he's looking at 3 of 3, and</p> <p>8 he's saying that when you -- that the actual</p> <p>9 number for the current prevailing wage rate plus</p> <p>10 the state average should be \$16.15.</p> <p>11 MR. CRABTREE: That's what I'm</p> <p>12 saying.</p> <p>13 MS. JEFFERSON: Instead of the</p> <p>14 \$19.43.</p> <p>15 MS. MCGAURAN: No. Instead of</p> <p>16 \$16.40.</p> <p>17 MR. CRABTREE: \$16.40 would be the</p> <p>18 top of the range, which would be 6 percent and</p> <p>19 not --</p> <p>20 MS. JEFFERSON: Okay. Right. And</p> <p>21 you-all are free to -- this is just what we</p> <p>22 proposed. When we tried to actually model what</p> <p>23 you-all had done the last time, if we did</p> <p>24 miscalculate, then that's fine, and we didn't</p> <p>25 provide the number you want to provide, now</p>	<p style="text-align: right;">Page 53</p> <p>1 you-all can let us know. You can inform us which</p> <p>2 rate you want to approve. And as long as it's</p> <p>3 within that range, we're okay with it. You just</p> <p>4 give us the number that you want.</p> <p>5 MS. MCGAURAN: Okay.</p> <p>6 MR. CRABTREE: That's what I</p> <p>7 thought we were doing. We were raising them all</p> <p>8 the same, including the ones with insufficient</p> <p>9 responses.</p> <p>10 MS. MCGAURAN: So we're not going</p> <p>11 to actually be able to approve any of these</p> <p>12 spreadsheets as it looks right now. We're going</p> <p>13 to have to go through each one of these line items</p> <p>14 and make sure that we've got the correct numbers.</p> <p>15 MR. CRABTREE: Just the ones with</p> <p>16 insufficient responses.</p> <p>17 MS. MCGAURAN: Right. Just the</p> <p>18 ones that are colored with red.</p> <p>19 CHAIRMAN PHILLIPS: Yeah, just</p> <p>20 those.</p> <p>21 MS. MCGAURAN: Not the ones that</p> <p>22 are colored with yellow in spreadsheet 3 of 3,</p> <p>23 right?</p> <p>24 MS. JEFFERSON: Right. So you only</p> <p>25 have six of those.</p>

<p style="text-align: right;">Page 54</p> <p>1 MS. MCGAURAN: Okay.</p> <p>2 MS. JEFFERSON: So we can go</p> <p>3 through all six of those.</p> <p>4 MS. MCGAURAN: Okay. I understand</p> <p>5 now.</p> <p>6 MS. JEFFERSON: So just to be</p> <p>7 clear, what is the amount that you-all want to</p> <p>8 actually use for bricklayer? Which amount would</p> <p>9 that be?</p> <p>10 MR. CRABTREE: \$16.15 by my</p> <p>11 calculations.</p> <p>12 MS. JEFFERSON: So in taking a look</p> <p>13 at that amount, is that within the range?</p> <p>14 MS. CAUDILL: Yes.</p> <p>15 MS. JEFFERSON: Okay. Great. All</p> <p>16 right. Okay. The next one is the Iron Workers</p> <p>17 Reinforcing.</p> <p>18 MS. CAUDILL: If you take the</p> <p>19 current rate plus the state average, you should</p> <p>20 have \$18.44.</p> <p>21 MR. CRABTREE: And that would be</p> <p>22 \$17.67 plus 0.77?</p> <p>23 MS. MCGAURAN: Yes.</p> <p>24 MR. CRABTREE: \$18.44.</p> <p>25 MS. JEFFERSON: Did you-all</p>	<p style="text-align: right;">Page 55</p> <p>1 calculate that?</p> <p>2 MS. CAUDILL: I'm coming up with</p> <p>3 \$18.44.</p> <p>4 MS. JEFFERSON: Could you calculate</p> <p>5 that on the record so we can see how you got the</p> <p>6 \$18.44?</p> <p>7 MS. CAUDILL: Well, I took -- the</p> <p>8 current prevailing wage rate for classification</p> <p>9 Number 11 is \$17.67. I multiplied it by the state</p> <p>10 average, which is 4.38 percent, and my answer was</p> <p>11 \$18.44.</p> <p>12 MS. MCGAURAN: That's what we got,</p> <p>13 \$18.44. And we just said -- I mean, what we're</p> <p>14 looking at is we're looking at if you take the</p> <p>15 current prevailing wage rate and you add Column K</p> <p>16 to it, what do you end up with?</p> <p>17 MS. JEFFERSON: Right. Okay.</p> <p>18 MR. WRIGHT: Yeah. What's happened</p> <p>19 on this spreadsheet is when it was filled out,</p> <p>20 they picked the 6 percent.</p> <p>21 MS. JEFFERSON: We just did</p> <p>22 6 percent. We didn't go back and take a look at</p> <p>23 the lower percentage.</p> <p>24 MR. WRIGHT: Okay. We'll just fix</p> <p>25 that.</p>
<p style="text-align: right;">Page 56</p> <p>1 Ms. Kim, I'm getting texts from Rab</p> <p>2 asking how he joins the conference call. Can I</p> <p>3 tell him we'll just let him know when Mr. Reinbold</p> <p>4 gets here?</p> <p>5 MS. MCGAURAN: He's here.</p> <p>6 MR. WRIGHT: Oh, hi.</p> <p>7 CHAIRMAN PHILLIPS: Hi, John.</p> <p>8 MS. JEFFERSON: Do you-all want to</p> <p>9 finish with these six?</p> <p>10 CHAIRMAN PHILLIPS: Yes, let's do</p> <p>11 this.</p> <p>12 MS. JEFFERSON: All right. And so</p> <p>13 the next one is Ironworkers Reinforcing.</p> <p>14 MS. CAUDILL: Okay. Take \$18.33,</p> <p>15 which is the current rate, and add 0.80 to that.</p> <p>16 It's \$19.13.</p> <p>17 MS. JEFFERSON: Is that within the</p> <p>18 range?</p> <p>19 MR. CRABTREE: \$19.13.</p> <p>20 MS. CAUDILL: Yes.</p> <p>21 MS. JEFFERSON: And I didn't ask</p> <p>22 about the other one on the record. That \$18.44,</p> <p>23 is that within the range?</p> <p>24 MS. CAUDILL: Yes.</p> <p>25 MS. JEFFERSON: All right. The</p>	<p style="text-align: right;">Page 57</p> <p>1 next one is Painter/Sandblaster.</p> <p>2 MS. CAUDILL: Take the current rate</p> <p>3 of \$18.60 and add \$1.25 --</p> <p>4 MS. MCGAURAN: No.</p> <p>5 Painters/Sandblaster --</p> <p>6 MS. CAUDILL: Oh, am I on the wrong</p> <p>7 one?</p> <p>8 MS. MCGAURAN: Yeah.</p> <p>9 MS. CAUDILL: \$28.60 --</p> <p>10 MS. MCGAURAN: Right.</p> <p>11 MS. CAUDILL: -- and add to it</p> <p>12 \$1.25, you get \$29.85.</p> <p>13 MS. MCGAURAN: That what I got.</p> <p>14 MS. JEFFERSON: Okay. Is that</p> <p>15 within the range?</p> <p>16 MS. CAUDILL: Yes.</p> <p>17 MS. JEFFERSON: The next one is</p> <p>18 Powder Person/Blaster.</p> <p>19 MS. CAUDILL: Okay. The current</p> <p>20 rate is \$21.46, adding 0.94. \$22.40.</p> <p>21 MS. MCGAURAN: That what I got.</p> <p>22 MS. JEFFERSON: Is that within the</p> <p>23 range?</p> <p>24 MS. SHERROD: Yes.</p> <p>25 MS. MCGAURAN: Yes.</p>

<p style="text-align: right;">Page 58</p> <p>1 MS. JEFFERSON: All right. And the 2 final one is Sweeping Machine/Vacuum Operator. 3 MS. CAUDILL: The current rate is 4 \$16.89, adding 0.74, \$17.63. 5 MS. MCGAURAN: That's what I got. 6 MS. JEFFERSON: Okay. Great. And 7 is that within the range? 8 MS. CAUDILL: Yes. 9 MS. SHERROD: Yes. 10 THE WITNESS: Okay. So I'm going 11 to make a motion that we accept a rate for Craft 12 Number 1, Bricklayer, at \$16.15; and Craft 13 Number 11, Ironworkers Reinforcing, at \$18.44; and 14 Craft Number 12, Ironworker Structural, at \$19.13; 15 and Craft Number 15, Painter/Sandblaster at 16 \$29.85; and Craft Number 16, Powder Person/Blaster 17 at \$22.40; and Craft Number 19, Sweeping Machine/ 18 Vacuum Operator at \$17.60. That is my motion. 19 MR. CRABTREE: Second. 20 CHAIRMAN PHILLIPS: All in favor? 21 (Affirmative response.) 22 MS. MCGAURAN: Do we need to remove 23 the motion that was originally made to set the 303 24 as it was distributed? 25 MR. BAILEY: It was never seconded.</p>	<p style="text-align: right;">Page 59</p> <p>1 MS. MCGAURAN: Okay. Good. I just 2 wanted to make sure. 3 MS. JEFFERSON: So just to be 4 clear, we are using spreadsheet 3 of 3 with the 5 modifications of your motion. 6 MS. MCGAURAN: Yes. We are 7 basically increasing them all by the state average 8 of 4.38 percent, which then gives us numbers that 9 are within the range. 10 MS. JEFFERSON: Now, when you say 11 "them all" -- 12 MS. MCGAURAN: It means all of the 13 ones that we were reviewing today. 14 MS. JEFFERSON: The six. 15 MS. MCGAURAN: The six, right. 16 MS. JEFFERSON: Great. 17 CHAIRMAN PHILLIPS: The ones in 18 red. 19 MS. MCGAURAN: Craft Numbers 1, 11, 20 12, 15, 16, and 19. 21 CHAIRMAN PHILLIPS: Okay. Are 22 you-all ready? 23 MS. JEFFERSON: Okay. And did you 24 want to get Mr. -- 25 MR. WRIGHT: Mr. Summers and,</p>
<p style="text-align: right;">Page 60</p> <p>1 actually, Mr. Starwalt, who happened to be on the 2 text somehow, would like to be conferenced in if 3 possible. Would you like their numbers? 4 MS. JEFFERSON: Let me see if I can 5 get them on the telephone here. We may need to do 6 one on the cell phone, and we may need to do the 7 other one here, because I'm not sure if this is... 8 MR. SUMMERS: Hello? 9 MR. WRIGHT: Rab, you're in the 10 conference call, sir, on my cell phone. 11 MR. SUMMERS: Thank you. 12 MR. WRIGHT: Okay. We're going to 13 add Kent, too. 14 MR. STARWALT: Hello? 15 MR. WRIGHT: We're adding you by 16 conference call, sir. 17 MR. STARWALT: Yes, sir. 18 MR. WRIGHT: You and Rab are both 19 on here. I'll set this in the middle of the room. 20 I hope you can hear it. 21 MS. MCGAURAN: So Rab, can you hear 22 us? 23 MR. SUMMERS: Yes, I can. 24 MS. MCGAURAN: And Kent? 25 MR. STARWALT: Yes, ma'am.</p>	<p style="text-align: right;">Page 61</p> <p>1 MS. MCGAURAN: Okay. 2 CHAIRMAN PHILLIPS: Gentlemen, each 3 of you need to state your full name, and then when 4 you speak, state your name as well so that the 5 reporter can get it. 6 MR. SUMMERS: Rab Summers, 7 Summers-Taylor. 8 MR. STARWALT: Kent Starwalt, 9 Tennessee Road Builders Association. 10 CHAIRMAN PHILLIPS: So can both of 11 you hear well? 12 MR. SUMMERS: Yes. 13 MR. STARWALT: Yes. 14 CHAIRMAN PHILLIPS: Okay. Great. 15 So we're going back and visiting whether the 16 prevailing wage rates apply to any municipality, 17 county, or other political subdivision. We've had 18 some discussion and we thought it was best if you 19 guys got involved over the phone. And Mr. John 20 Reinbold is here as well to offer up any comments 21 and opinions. 22 MS. MCGAURAN: And just to give 23 some background for various folks, what we've 24 determined is that the reason we need to address 25 this now is because it has to do with whether or</p>

<p style="text-align: right;">Page 62</p> <p>1 not we change our rules as they currently are 2 written and as they have been brought forward. 3 And what's in question, specifically, 4 with regard to the rules is Section 800-03-02-.03 5 effective dates. And it's the section that 6 says -- the sentence that says, "No contract shall 7 be let by any state agency or by any new 8 municipality, county, or other political 9 subdivision for a state highway construction not 10 in compliance with the prevailing wage rates as 11 established by the Commission." 12 And that's what the rules say today, 13 and so we're in discussion, at this point, to 14 understand whether we need to modify these rules 15 at all. 16 CHAIRMAN PHILLIPS: Mr. Reinbold, 17 welcome. 18 MR. REINBOLD: Yes, sir. 19 CHAIRMAN PHILLIPS: We're glad to 20 have you here. 21 MR. REINBOLD: Thank you. 22 CHAIRMAN PHILLIPS: And we're open 23 to your comments and suggestions. 24 MR. REINBOLD: Well, my name is 25 John Reinbold. I'm general counsel at TDOT. And</p>	<p style="text-align: right;">Page 63</p> <p>1 I guess I've sort of backed into this thing. 2 Wayburn asked me to comment, not on the proposed 3 rules as such but on, I think, an email from 4 Mr. Bailey concerning the rules and how they 5 should be interpreted. 6 And Mr. Bailey and I have engaged in 7 sort of a back-and-forth in emails that some of 8 you may have seen. I guess the way I look at it 9 is -- and this is, basically, an exercise -- it's 10 the kind of thing the lawyers like to do, is parse 11 words and try to figure out what statutes mean and 12 that sort of thing. This is an exercise in 13 statutory construction. 14 When I read the statute, I'm trying 15 to read the law to give meaning to the words of 16 the statute and to not put meaning into it that 17 isn't there. And when I read the Prevailing Wage 18 Act as it's been amended since 2013, I believe, 19 when it dropped all the building -- vertical 20 building out of it, and it's restricted to highway 21 construction projects, it says that -- and this is 22 in Tennessee Code 12-4-403(b), where it sets out 23 when the state prevailing wage rates applies, it 24 says, any highway contractor entering into a state 25 contract for the performance of work on state</p>
<p style="text-align: right;">Page 64</p> <p>1 highway construction projects shall pay not less 2 than the prevailing wage rate for all the 3 classifications of work, and so on, that you-all 4 work on every quarter, I guess, or however often 5 you-all meet. 6 So that's the mandate of the statute 7 right there. So there are terms in there that we 8 have to understand the definition of, and those 9 definitions are provided. In Tennessee Code 10 12-4-402(5) it defines a state contract as any 11 contractual agreement, written or oral, entered 12 into by any person, firm, or corporation with this 13 state for the performance of work on a state 14 highway construction project. 15 So I make a distinction -- I read a 16 distinction in the law between the contracts to 17 which it applies and the projects to which the 18 prevailing wage rates apply. And if you go 19 through the definition of a state highway 20 construction project, it's -- and you, basically, 21 work on a public highway, the public highway, the 22 way it's defined right there in the statute, would 23 include state highways as well as local roads. So 24 the project on which the prevailing wage could 25 apply, yes, could include local roads. But the</p>	<p style="text-align: right;">Page 65</p> <p>1 contract has to be a contract with this state. 2 And for a contract to be with this state between a 3 highway contractor entering into a state contract, 4 meaning a contract between a person, firm, or 5 corporation with this state, you have to have a 6 contract between a highway contractor and a state 7 agency. Those are the contracts to which the 8 prevailing wage rate applies. I don't know how 9 else to read it. 10 And so, to me, that's confirmed in 11 every other provision in the Prevailing Wage Act 12 that deals with contractual obligations of the 13 parties to the contract -- to the prevailing -- to 14 the contract to which the prevailing wage rate 15 applies. 16 If you start with 12-4-407 all the 17 way through 12-4-412, every one of those statutes 18 refers to a contract between a highway contractor 19 and a state agency. None of them refers to a 20 contract between a highway contractor and a local 21 government. Not one of them. There isn't 22 anywhere in the code that it makes any reference 23 at all to any contract between a highway 24 contractor and a local government. 25 And, to me, you're reading something</p>

<p style="text-align: right;">Page 66</p> <p>1 into the statute that simply isn't there if you 2 try to apply it to contracts that are between a 3 city or a county and a highway contractor, even if 4 the project involves state or federal funds 5 administered through TDOT. And it doesn't render 6 meaningless the provisions in there that the 7 projects can be on local roads. I acknowledge 8 that readily. The project can involve work on a 9 local road, and in the emails I sent to Mr. Bailey 10 I gave a couple of examples of that. A state 11 industrial access highway project is not on a 12 state highway. But TDOT enters into a contract to 13 construct that state industrial access road, and 14 when it's constructed, it's turned over to the 15 local government to maintain. That's a local 16 road. Would the prevailing wage rates apply? 17 Yes.</p> <p>18 Similarly, if we have an HSIP -- it's 19 a Highway Safety Improvement Project that's under 20 a federal aid program of where TDOT will construct 21 various safety improvements, signs and markings 22 and various improvements on local roads, county 23 roads that already exist, and then we construct 24 those improvements, turn them over to the locals 25 to maintain, does the prevailing wage rate apply?</p>	<p style="text-align: right;">Page 67</p> <p>1 Yes, to that project. But it also applies because 2 it's a state contract, a contract between a state 3 agency and a highway contractor.</p> <p>4 That's an essential element of the 5 application of the act, is to be a contract 6 between a highway contractor and a state agency, 7 not a contract between a highway contractor and 8 the local government.</p> <p>9 MS. MCGAURAN: So --</p> <p>10 MR. CRABTREE: That's what I meant 11 to say.</p> <p>12 MS. MCGAURAN: So I have a 13 question. So when I read it, and I look at 14 establishment and payment of prevailing wage 15 12-4-403, it said, "It is hereby declared to be 16 the policy of the State that the prevailing wage 17 rate be determined by defined standards and that 18 such a rate be paid workers on all state highway 19 construction projects."</p> <p>20 And then above in the definitions for 21 a state highway construction project it defines 22 that as "any construction project for the purpose 23 of building, rebuilding, locating, relocating, or 24 repairing any public highway." 25 And then they define a public highway</p>
<p style="text-align: right;">Page 68</p> <p>1 as "any street, road, highway, expressway, bridge 2 or viaduct, including an adjacent right-of-way 3 that is constructed or maintained by the state or 4 any municipality or political subdivision of the 5 state and that is funded in whole or in part with 6 federal or state highway funds."</p> <p>7 That doesn't say anything about 8 having to be a state agency, and it doesn't say 9 anything about it having to be a contract let by a 10 state agency. So why is that wrong?</p> <p>11 MR. REINBOLD: I don't say that 12 it's wrong. I would say there's some tension 13 between the first part of 403 and the second part 14 of 403. But if you read the language that 15 actually establishes the mandate of when the act 16 applies, there's 403(b) which says, "Any time a 17 highway contractor enters into a state contract 18 for the performance of a state highway 19 construction project" -- again, there's a 20 distinction between a contract and project. A 21 project doesn't have to be on the state highway 22 system. Agreed. But it says a state contract. 23 And a state contract is a contract between a 24 private entity and this state. I don't know how 25 else to read it, other than a contract with the</p>	<p style="text-align: right;">Page 69</p> <p>1 state, meaning a state agency.</p> <p>2 And again, every single provision in 3 the act that deals with that contract refers to a 4 contract between the state agency and a highway 5 contractor. If the act was intended to apply to 6 local governments, why is there no provision in 7 there at all giving any instructions as to how 8 this would apply to a local government contract? 9 There aren't any.</p> <p>10 MR. BAILEY: So just based on your 11 interpretation, if Wilson County hires a 12 contractor to construct a local road and they are 13 receiving some state funds for that construction, 14 the Prevailing Wage Act would not apply.</p> <p>15 MR. REINBOLD: If it's a locally 16 let and administered contract. That's the way I 17 read the law. It would not apply to that 18 contract.</p> <p>19 MR. BAILEY: And in that case, then 20 I say -- if that's the interpretation, then I say 21 that the words constructed by any municipality or 22 political subdivision of the state are rendered 23 meaningless. Those words are meaningless.</p> <p>24 MR. REINBOLD: Well, that's simply 25 not true. The words are meaningful in the example</p>

<p style="text-align: right;">Page 70</p> <p>1 I just gave. A state highway construction 2 project, as opposed to a state highway contract, 3 or a state contract -- a state highway 4 construction project could include work on a local 5 road, and yes, the highway Prevailing Wage Act 6 would apply to that project if it's a state 7 contract. And again, I just gave examples of that 8 that give the words of the statute meaning in the 9 case of a state industrial access road projects or 10 the highway safety improvement projects. One is 11 state money; the other is federal money. Both are 12 contracts that TDOT awards and administers, and 13 the Prevailing Wage Act would apply even though 14 that's on local roads.</p> <p>15 So there's meaning given to those 16 words in the statute to include non-state highway, 17 public highways.</p> <p>18 MR. BAILEY: Well, I mean, even the 19 language of the current rules -- I mean, that's 20 why we're having this discussion. The rules 21 already recognize the fact that it says no 22 contract shall be let by any state agency or by 23 any municipality, county, or other political 24 subdivision for a state highway construction 25 project not in compliance with the prevailing wage</p>	<p style="text-align: right;">Page 71</p> <p>1 rates as established by the Commission. 2 So that's been in the rules for I 3 don't know how many years. So, I mean, it has 4 always been applied that way, to local contracts 5 as well as state contracts. And it's --</p> <p>6 MR. REINBOLD: And it's been 7 applied to airport projects and other things which 8 we discussed last year --</p> <p>9 MR. BAILEY: Right.</p> <p>10 MR. REINBOLD: -- and determined 11 clearly are not really within the statute.</p> <p>12 MR. BAILEY: I absolutely agree. I 13 absolutely agree.</p> <p>14 MR. REINBOLD: And, you know, so 15 the fact that it's been applied in a manner 16 doesn't mean that it's applied correctly.</p> <p>17 MR. BAILEY: True. But that's 18 where I get to what I think the intent of the act 19 was. If the intent was to completely exclude 20 local road projects, there wouldn't have been any 21 mention of that in the definition of a public 22 highway.</p> <p>23 MR. REINBOLD: I don't agree with 24 that. Again, that means -- that clarifies that in 25 a state contract for the construction of</p>
<p style="text-align: right;">Page 72</p> <p>1 improvements on local roads, the Prevailing Wage 2 Act applies. That's exactly -- that gives meaning 3 to those words. And, again, in the two examples I 4 gave, not local -- not state highways, local 5 roads, state contract, the prevailing wage rate 6 applies, yes.</p> <p>7 MR. BAILEY: Yeah, if it's a state 8 contract. But you're saying if it's a local 9 government contract with a contractor and they're 10 receiving state highway funds for that local 11 project, that the Prevailing Wage Act would not 12 apply.</p> <p>13 MR. REINBOLD: I believe that's the 14 correct way to read the statute, yes.</p> <p>15 MR. BAILEY: That's where we're at. 16 I mean, you know...</p> <p>17 MR. STARWALT: This is Kent 18 Starwalt. Can I ask you a quick question?</p> <p>19 CHAIRMAN PHILLIPS: You may.</p> <p>20 MR. REINBOLD: Yes, sir.</p> <p>21 MR. STARWALT: So John, would -- if 22 you have -- if Rab or Steve do a project and they 23 have done a project, a local project, local 24 administered project, so -- whereby you say a 25 prevailing wage would not be required, can they</p>	<p style="text-align: right;">Page 73</p> <p>1 turn that in -- and let's say they did pay the 2 prevailing wage when they paid the wages on it, 3 can they turn that project in to help determine 4 the prevailing wage in the state?</p> <p>5 MR. REINBOLD: Well --</p> <p>6 MR. STARWALT: If it's not a state 7 highway contract, so therefore --</p> <p>8 MR. REINBOLD: That's correct.</p> <p>9 MR. STARWALT: But it was not a 10 state highway contract, because it was with TDOT, 11 but it was on a local road.</p> <p>12 MR. REINBOLD: Well, Kent, to 13 answer that question, you look at the statute that 14 addresses how the Prevailing Wage Act is to be 15 established. And that's at 12-4-405. And it 16 says, 12-4-405(1), every highway contractor, as 17 herein defined in the state of Tennessee, shall 18 have the right to certify on the contract that's 19 entered into to the Commission on or before 20 October 31 on each unit that a determination is to 21 be made the following. Copies of payroll records 22 for the preceding calendar quarter that by area, 23 as defined in subdivision 2, the number of hours 24 worked and straight fund for hours paid, for such 25 hours in the each of the classifications referred</p>

<p style="text-align: right;">Page 74</p> <p>1 to in this part by area as defined in 2 subdivision 2, so on and so on.</p> <p>3 So that's not limited by state 4 contract. There's not any language in there that 5 limits that to a state contract. It limits it to 6 every highway contractor as herein defined. And a 7 highway contractor as herein defined, that means 8 any contractor, subcontractor, person, firm or 9 corporation engaged in state construction projects 10 for purposes of building, rebuilding, locating, 11 relocating, repairing any public highway.</p> <p>12 I think that -- so again, it's a 13 highway contractor engaged in working on -- it 14 says state construction project. I think that 15 means a state highway construction project. When 16 the Act was amended, I think they just missed that 17 one. Because there used to be a definition of 18 state construction project that included vertical 19 projects as well. And when the Act was amended, 20 that was eliminated and it was then restricted to 21 state highway construction projects.</p> <p>22 But in that case, the highway 23 contractor simply has to be engaged in a state 24 highway construction project for the purposes of 25 building, rebuilding, locating, relocating and</p>	<p style="text-align: right;">Page 75</p> <p>1 repairing any public highway, which would 2 include -- a state highway construction project 3 could include any highway project on a state or 4 local road using -- because of the definition 5 public highway with the use of federal or state 6 funds.</p> <p>7 MR. WRIGHT: John, can I ask to 8 read back to you what I think I've heard you say? 9 MR. REINBOLD: All right. 10 MR. WRIGHT: You think the 11 prevailing wage applies to any contract let by 12 TDOT. 13 MR. REINBOLD: Or any other state 14 agency. 15 MR. WRIGHT: Okay. Be it the 16 Department of Labor or whatever, anybody that 17 reports to Governor Haslam. 18 MR. REINBOLD: (Nods head.) 19 MR. WRIGHT: But you're saying for 20 the purposes of determining the wage rate, you see 21 that we can -- that people who engage in the 22 highway construction business, as you defined it, 23 are requested to submit their data on projects 24 that are -- how did you define it? -- but it 25 didn't have to include -- it was a state highway</p>
<p style="text-align: right;">Page 76</p> <p>1 project, but not a contract.</p> <p>2 MR. REINBOLD: Correct. 3 MR. WRIGHT: So if I have a 4 contract with my home county or home city that 5 involves what would be defined as a public high or 6 a public -- or whatever they call it, a state -- 7 MR. REINBOLD: Public highway, 8 right. 9 MR. WRIGHT: Yeah. Then it's okay 10 to submit that rate in the survey, but I'm not 11 necessarily required, nor is the County required 12 to require the prevailing wage to be paid on the 13 project. 14 MR. REINBOLD: All I can do is read 15 the statute to you. 16 MR. WRIGHT: Yeah. I mean, but is 17 that what I think I've heard you say? 18 MR. REINBOLD: Yes. 19 MR. WRIGHT: Okay. 20 MR. REINBOLD: If -- with this 21 caveat. Remember, a public highway -- for some 22 reason, the definition of -- it's in the 23 definition of public highway and not state highway 24 construction project -- but the public highway is 25 defined in the statute. It means that any state</p>	<p style="text-align: right;">Page 77</p> <p>1 highway or any road maintained or constructed by a 2 municipality or political subdivision, state or 3 local, in other words, that is funded in whole or 4 in part with federal or state highway funds. So 5 there has to be federal or state highway funds 6 involved.</p> <p>7 If you had a purely local project -- 8 MR. WRIGHT: It is a little more 9 difficult from -- 10 MR. REINBOLD: -- local money on a 11 local road, it wouldn't be included, is the way I 12 read it. 13 MS. MCGAURAN: So again, I'm going 14 to come back to 12-4-403. When I've been through 15 this in the past, I've been told that when you 16 have an A and a B, that the A's and the B's are 17 two equal points of view, right, that they apply 18 to both of those equally. One is not a subset of 19 the other. 20 And so I agree that your B talks 21 about your specific state contracts, but I don't 22 see where your A does. Can you help me understand 23 that? 24 MR. REINBOLD: Well, it is -- A is 25 a declaration of policy. It is not -- they are</p>

<p style="text-align: right;">Page 78</p> <p>1 not words of command. And B contains the words of 2 command that says any contract entered into 3 between a highway contractor -- 4 MS. MCGAURAN: So what if they -- 5 MR. REINBOLD: -- entering into a 6 state contract, which is -- a state contract is a 7 contract between a highway contractor and a state 8 agency, by definition. That's the words of 9 command of the Act. 10 MS. MCGAURAN: So what are they 11 saying with A? 12 MR. REINBOLD: That state highway 13 construction projects include projects on local 14 roads where state or federal funds are used. That 15 is part of the goal of the Act. 16 You know, if there's tension here, 17 you know, maybe the General Assembly needs to sort 18 it out. If the words they wrote are not 19 subjectively what they intended, then maybe they 20 need to go back to the drawing board. 21 But if you read the intent of the 22 statute based on the words that are written, there 23 isn't any language in there, not one word in there 24 about a local contract. There isn't. 25 MS. MCGAURAN: But you talked about</p>	<p style="text-align: right;">Page 79</p> <p>1 the section earlier where you said it applies to 2 projects beyond just those projects for state 3 contracts. 4 MR. REINBOLD: No. 5 MS. MCGAURAN: You specifically 6 quoted a section -- 7 MR. REINBOLD: No, no, no, no, no. 8 I said it applies to projects that are not only 9 state highways. I didn't say it applied to 10 contracts that are not state contracts. 11 MR. SUMMERS: I have a question. 12 MR. BAILEY: Who's speaking? 13 MS. MCGAURAN: Who has the 14 question? 15 MR. SUMMERS: Yes. When you 16 talk -- 17 MS. MCGAURAN: Will you please say 18 your name. 19 MR. SUMMERS: Rab Summers. 20 When you talked about projects using 21 state funds, how would you define state funds? My 22 point is when you collect gas tax and by the 23 statute, part of those gas tax moneys go back to 24 the cities and counties. Those are funds from the 25 state. Would you say that if a project is let</p>
<p style="text-align: right;">Page 80</p> <p>1 with those gas tax dollars that are sent back to 2 the cities and counties, that those are state 3 funds? 4 MR. REINBOLD: Well, the term 5 "state highway fund" isn't defined specifically in 6 this Act. But the state highway fund is defined 7 separately in the statute. And that's the fund 8 that funds TDOT. 9 MS. MCGAURAN: Where is it defined? 10 MR. REINBOLD: Title 54, Chapter 1. 11 I don't remember the exact statute number. I 12 don't have that in front of me. 13 MR. STARWALT: John, this is Kent 14 Starwalt. If it's in order to ask another 15 question about something... 16 MR. BAILEY: Go ahead. 17 CHAIRMAN PHILLIPS: Go ahead. 18 MR. STARWALT: So just to clarify 19 here, in the Approve Act, there are projects there 20 where there are county highway bridges -- in 21 essence, there are bridges off the state system on 22 the county system, but TDOT is paying for that, 23 and TDOT will administer those contracts. So 24 while it's a county road, not a state highway road 25 or a state bridge -- it's a county bridge -- TDOT</p>	<p style="text-align: right;">Page 81</p> <p>1 is going to have a contract for that project. And 2 so therefore, I believe your determination would 3 be, since that's a state highway contract, even 4 though it's a non-state bridge, that the 5 prevailing wage would apply. 6 But in the same thing, we have the 7 state-aided funds, which go to the counties. And 8 through there the counties are administering the 9 project, so therefore, the prevailing wage would 10 not apply because it's a county project, even 11 though there's direct state-aid funds applied to 12 it. So is that the fair interpretation of what 13 you're saying? 14 MR. REINBOLD: Yes. I would say 15 the only word I would quibble with there is it's 16 not my determination; it's my opinion -- 17 MR. STARWALT: Sure. 18 MR. REINBOLD: -- which I've been 19 asked to give. It's not my -- it's not my 20 decision, you know. It's not my determination. 21 MR. WRIGHT: Could I throw out a 22 potential solution for consideration? If we 23 were -- you know, John, we are under pressure. We 24 have to publish rates the day after tomorrow. So 25 this Commission has to act today on something. To</p>

<p style="text-align: right;">Page 82</p> <p>1 publish the rates, we've changed a lot of 2 definitions and done a lot of things. We need to 3 publishing some new rules. 4 I would consider making a motion that 5 we publish the rules as Mr. Bailey has them in 6 front of us, that we ask you to consider them in 7 their entirety, and if there needs to be 8 clarification -- what I think I hear is there 9 needs to be clarification between the projects and 10 the contracts, I mean, I think, and, actually, 11 what they apply to. And then we go ahead, we 12 approve that, and then ask for an Attorney 13 General's opinion on the difference between your 14 two opinions, if we can do that. I don't know if 15 we have the authority to. And if it comes back 16 that it is something that needs to be changed in 17 the rules, we can either change the rules or ask 18 the -- then as we come back in the fall, we could 19 ask the -- we could either change our rules again 20 or ask the legislature to make a corrective 21 something or nother, or whatever you call it. 22 CHAIRMAN PHILLIPS: Or the 23 administration. 24 MR. WRIGHT: Does that seem like a 25 reasonable course of action today?</p>	<p style="text-align: right;">Page 83</p> <p>1 MR. REINBOLD: Well, I mean, that's 2 for y'all to determine. It's not -- yeah. I 3 mean, if y'all want to ask for an opinion, I'm 4 certainly not going to say you shouldn't. 5 MR. WRIGHT: Well, I think we need 6 to get the legislature -- 7 MR. REINBOLD: I think -- 8 MR. WRIGHT: We need to get it 9 right, whatever that is. 10 MR. REINBOLD: A state official has 11 the right to ask the Attorney General for an 12 opinion. Commissioner Phillips could; TDOT could; 13 I assume y'all could as a commission. I don't 14 know. But as long as it's coming, basically, from 15 a point of authority. 16 MR. WRIGHT: I would like to make 17 that motion. 18 CHAIRMAN PHILLIPS: And I'll second 19 that motion. 20 MS. MCGAURAN: So that we -- and 21 what we're really saying, that we accept Section 22 800-03-02-.02 effective dates as written. 23 MR. WRIGHT: Yes. 24 MR. REINBOLD: As I understand 25 that's already in your rule. Right?</p>
<p style="text-align: right;">Page 84</p> <p>1 CHAIRMAN PHILLIPS: Yes. 2 MR. REINBOLD: What I thought we 3 were talking about was making changes to the rule. 4 CHAIRMAN PHILLIPS: Right. It -- 5 MR. REINBOLD: Which, I mean -- 6 CHAIRMAN PHILLIPS: It would really 7 only require a motion if we were changing them, 8 right? 9 MR. WRIGHT: Well, now, we have new 10 proposed rules that change a lot of things like 11 descriptions of blaster versus blaster handler and 12 Class A operator. But there are rules. 13 CHAIRMAN PHILLIPS: Yes. We just 14 need a motion to approve the rules. 15 MR. BAILEY: Correct. 16 CHAIRMAN PHILLIPS: As defined. 17 MR. BAILEY: As modified today on 18 the discussion of blaster and handler. 19 CHAIRMAN PHILLIPS: Yeah. 20 MS. MCGAURAN: That's what I -- 21 CHAIRMAN PHILLIPS: We don't need a 22 motion to -- we don't need anything about, you 23 know -- 24 MR. WRIGHT: About the Attorney 25 General.</p>	<p style="text-align: right;">Page 85</p> <p>1 CHAIRMAN PHILLIPS: Yeah. And so 2 the motion is to approve the rules as presented to 3 the Commission, correct? 4 MS. MCGAURAN: With the 5 modifications previously discussed in this 6 meeting -- 7 CHAIRMAN PHILLIPS: And 8 incorporated -- yes. 9 MS. MCGAURAN: -- incorporating 10 those for blaster and handler. 11 CHAIRMAN PHILLIPS: Handler, yes. 12 Okay. 13 That motion has been made and 14 seconded. All in favor? 15 (Affirmative response.) 16 CHAIRMAN PHILLIPS: So moved. 17 MS. MCGAURAN: Do you have to say 18 "All opposed?" 19 CHAIRMAN PHILLIPS: All opposed? 20 (No verbal response.) 21 MR. CRABTREE: I'm going to 22 abstain. 23 CHAIRMAN PHILLIPS: I could tell by 24 the look on your face you were. 25 MR. WRIGHT: Is there will to get</p>

<p style="text-align: right;">Page 86</p> <p>1 an Attorney General's opinion on the applicability 2 of this rule.</p> <p>3 CHAIRMAN PHILLIPS: I think there 4 is. Because we -- over the last six years, we've 5 encountered so many of this situation. It's 6 incredible the number of statutes that are 7 ambiguous or even contradictory. And so I think 8 that we should. We can do that. I can do that. 9 We can ask for an opinion.</p> <p>10 MS. MCGAURAN: That would be great.</p> <p>11 CHAIRMAN PHILLIPS: Okay.</p> <p>12 MS. MCGAURAN: Do we need to make a 13 motion that you ask, or can we just --</p> <p>14 CHAIRMAN PHILLIPS: I think you 15 just do it.</p> <p>16 MS. MCGAURAN: Okay. Good.</p> <p>17 CHAIRMAN PHILLIPS: I mean, we can 18 just do it in our position without having to have 19 a motion or anything like that.</p> <p>20 MS. MCGAURAN: Great.</p> <p>21 CHAIRMAN PHILLIPS: So we will do 22 that, and we'll record that that will occur.</p> <p>23 MR. WRIGHT: That gives us an 24 opportunity to address Mr. Reinbold's concerns and 25 Mr. Bailey's.</p>	<p style="text-align: right;">Page 87</p> <p>1 CHAIRMAN PHILLIPS: Okay.</p> <p>2 MS. JEFFERSON: Do they have any 3 more questions?</p> <p>4 MR. WRIGHT: Kent or Rab, do you 5 have anything else to add, say, or comment?</p> <p>6 MR. SUMMERS: No. I think we have 7 a good course of action.</p> <p>8 MR. WRIGHT: Well, have a great 9 day, sir.</p> <p>10 MR. SUMMERS: Thank you.</p> <p>11 MR. STARWALT: Thank you-all.</p> <p>12 MS. MCGAURAN: I would like to say 13 thank you, Mr. Reinbold. We really appreciate you 14 coming down and here and sharing your perspective 15 helping us understand completely the department of 16 transportation's perspective.</p> <p>17 MR. REINBOLD: Well, I guess that's 18 for Wayburn to determine, whether or not it's the 19 Department of Transportation's perspective. 20 Again, I'm only offering my opinion.</p> <p>21 MS. MCGAURAN: We respect your 22 opinion.</p> <p>23 MR. CRABTREE: His opinion and the 24 Department's opinion.</p> <p>25 CHAIRMAN PHILLIPS: Well, we do,</p>
<p style="text-align: right;">Page 88</p> <p>1 indeed, John. Thanks so much for taking your time 2 to come down.</p> <p>3 Okay. So the only other thing is the 4 open discussion for proposed prevailing wage 5 commission meetings.</p> <p>6 MR. CRABTREE: Did we vote on the 7 range?</p> <p>8 MS. MCGAURAN: We did.</p> <p>9 MS. JEFFERSON: We voted on the 10 range.</p> <p>11 MR. WRIGHT: We already voted on 12 that.</p> <p>13 MS. JEFFERSON: Do you see those 14 notes at the very bottom?</p> <p>15 CHAIRMAN PHILLIPS: Yes. Are you 16 talking about the proposed dates?</p> <p>17 MS. JEFFERSON: Yes. The proposed 18 dates and then those other notes at the bottom.</p> <p>19 CHAIRMAN PHILLIPS: Yeah. And 20 you've got -- yes, I see those now. Okay. 21 Well, first, we'll deal with the 22 proposed dates. And the proposed dates are 23 August 15th or 22nd, 2019, and November 13th, 24 14th, 20th or 21st.</p> <p>25 MR. WRIGHT: I'm good with both</p>	<p style="text-align: right;">Page 89</p> <p>1 August dates.</p> <p>2 MS. MCGAURAN: I'm not. I have 3 limited options on the 22nd. The 15th is a better 4 date for me.</p> <p>5 CHAIRMAN PHILLIPS: Okay.</p> <p>6 MS. MCGAURAN: And both of the 7 times are fine on the 15th.</p> <p>8 CHAIRMAN PHILLIPS: Okay. Wayburn?</p> <p>9 MR. CRABTREE: It's good for me, 10 either one of them. I'm flexible.</p> <p>11 MS. JEFFERSON: Since Mr. Summers 12 isn't a part of the conversation, we can actually 13 take you-all's dates and then go back and talk 14 with him about them, or you-all can notify Lynn 15 prior to the end of the year as to what's best for 16 you --</p> <p>17 CHAIRMAN PHILLIPS: Right.</p> <p>18 MS. JEFFERSON: -- and then we can 19 actually provide that information to the 20 Commission as a whole.</p> <p>21 CHAIRMAN PHILLIPS: So each of us 22 would just -- well, I won't be here so none of it 23 matters, but --</p> <p>24 MR. WRIGHT: Lynn, I'm good on 25 every date.</p>

<p style="text-align: right;">Page 90</p> <p>1 MS. KIRBY: All right.</p> <p>2 CHAIRMAN PHILLIPS: So each of you</p> <p>3 check your schedules and just let Lynn know which</p> <p>4 is good for you.</p> <p>5 And lastly, conflict of interest and</p> <p>6 declarations must be completed by the August 2019</p> <p>7 meeting. And Lynn will provide you the forms.</p> <p>8 MS. KIRBY: Yes.</p> <p>9 CHAIRMAN PHILLIPS: Do I have a</p> <p>10 motion to -- is there any other discussion about</p> <p>11 anything?</p> <p>12 MS. JEFFERSON: I would just like</p> <p>13 to thank all of the commission members. I think</p> <p>14 you-all have done a superb job this year. I think</p> <p>15 that in calculating our rates and you-all</p> <p>16 verifying our rates, I think that you-all have</p> <p>17 given us the direction and the guidance that we've</p> <p>18 needed as a Labor Standards Unit. And I'm just</p> <p>19 very appreciative.</p> <p>20 I know that Commissioner has said</p> <p>21 today that this is his last meeting, and I think</p> <p>22 that we should actually commend him on a job well</p> <p>23 done.</p> <p>24 (Applause.)</p> <p>25 CHAIRMAN PHILLIPS: Well, I'd like</p>	<p style="text-align: right;">Page 91</p> <p>1 to say that I think the Commission has done a good</p> <p>2 job, much different from when we first got here.</p> <p>3 And all of you are the subject matter experts.</p> <p>4 I'm just sort of here. And I think you-all have</p> <p>5 down a wonderful job in getting these rates where</p> <p>6 they need to be professionally and fairly. So my</p> <p>7 compliments to all of you.</p> <p>8 So I think it's a much more</p> <p>9 meaningful commission today than it was a number</p> <p>10 of years ago. Don't you, Kim?</p> <p>11 MS. JEFFERSON: I do, too. I</p> <p>12 agree.</p> <p>13 CHAIRMAN PHILLIPS: And that's</p> <p>14 because of you guys and ladies. So thank you.</p> <p>15 And also, through our staff who has</p> <p>16 also become -- made it much more professional than</p> <p>17 it used to be, and much more organized.</p> <p>18 MS. JEFFERSON: Yes. And we're</p> <p>19 very appreciative --</p> <p>20 CHAIRMAN PHILLIPS: Our gratitude</p> <p>21 to you as well.</p> <p>22 MS. JEFFERSON: -- very</p> <p>23 appreciative. And Carolyn, actually, this is her</p> <p>24 last meeting as well.</p> <p>25 Carolyn Sherrod, can you stand?</p>
<p style="text-align: right;">Page 92</p> <p>1 We want to recognize her on a job</p> <p>2 well done.</p> <p>3 (Applause.)</p> <p>4 MS. JEFFERSON: And Carolyn is our</p> <p>5 administrative services manager. She actually</p> <p>6 assists the administrative -- well, actually, the</p> <p>7 support staff. She oversees staff to ensure that</p> <p>8 all of this information is proper. So we're very</p> <p>9 appreciative of everything Carolyn has done in the</p> <p>10 way of supervising, and we just want to make sure</p> <p>11 we give her her well-due respect and her --</p> <p>12 actually, her glory today.</p> <p>13 MS. SHERROD: Thank you.</p> <p>14 CHAIRMAN PHILLIPS: You and I will</p> <p>15 be riding off into the sunset. Thanks so much,</p> <p>16 Carolyn. We appreciate it.</p> <p>17 MS. SHERROD: Thank you.</p> <p>18 CHAIRMAN PHILLIPS: So any other</p> <p>19 comments or questions or...</p> <p>20 If not, we'll take a motion to</p> <p>21 adjourn.</p> <p>22 MR. WRIGHT: So moved.</p> <p>23 MR. CRABTREE: Second.</p> <p>24 CHAIRMAN PHILLIPS: All in favor.</p> <p>25 (Affirmative response.)</p>	<p style="text-align: right;">Page 93</p> <p>1 CHAIRMAN PHILLIPS: Great.</p> <p>2</p> <p>3 END OF PROCEEDINGS.</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

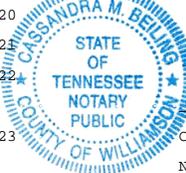
1 C E R T I F I C A T E
2 STATE OF TENNESSEE)
3 COUNTY OF WILLIAMSON)

4
5
6 I, Cassandra M. Beiling, a Notary Public
7 in the State of Tennessee, do hereby certify:

8
9 That the within is a true and accurate
10 transcript of the Prevailing Wage Commission
11 Meeting taken on the 29th day of November, 2018.

12
13 I further certify that I am not related to
14 any of the parties to this action, by blood or
15 marriage, and that I am in no way interested in
16 the outcome of this matter.

17
18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 29th day of January, 2019.



20
21
22 *Cassandra M. Beiling*
23 Cassandra M. Beiling, LCR# 371

24 Notary Public State at Large
25 My commission expires: 3/15/2020

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